

DIVISION J - OTHER MATTERS  
TITLE I - MISCELLANEOUS PROVISIONS AND OFFSETS

Sec. 101. For an additional amount for the Department of Energy for the weatherization assistance program pursuant to 42 U.S.C. 6861 et seq. and notwithstanding section 3003(d)(2) of Public Law 99-509, \$230,000,000, to remain available until expended.

1           SEC. 102. Section 1201(a) of the Ronald W. Reagan Na-  
2 tional Defense Authorization Act for Fiscal Year 2005  
3 (Public Law 108-375) is amended by striking  
4 “\$300,000,000” in the matter preceding paragraph (1)  
5 and inserting “\$500,000,000”.

1 SEC. 103. (a) The District of Columbia Appropria-  
2 tions Act, 2005 (Public Law 108—335) is amended as  
3 follows:

4 (1) The paragraph under the heading “CAPITAL  
5 OUTLAY” is amended by striking “For construction  
6 projects, an increase of \$1,087,649,000, of which  
7 \$839,898,000 shall be from local funds,  
8 \$38,542,000 from Highway Trust funds,  
9 \$37,000,000 from the Rights-of-way funds,  
10 \$172,209,000 from Federal grant funds, and a re-  
11 scission of \$361,763,000 from local funds appro-  
12 priated under this heading in prior fiscal years, for  
13 a net amount of \$725,886,000, to remain available  
14 until expended;” and inserting “For construction  
15 projects, an increase of \$1,102,039,000, of which  
16 \$839,898,000 shall be from local funds,  
17 \$38,542,000 from Highway Trust funds,  
18 \$51,390,000 from the Rights-of-way funds,  
19 \$172,209,000 from Federal grant funds, and a re-  
20 scission of \$361,763,000 from local funds appro-  
21 priated under this heading in prior fiscal years, for  
22 a net amount of \$740,276,000, to remain available  
23 until expended;”.

24 (2) Section 340(a) is amended to read as fol-  
25 lows:

1 “(a) Section 603(e)(3)(E) of the Student Loan Mar-  
2 keting Association Reorganization Act of 1996 (20 U.S.C.  
3 1155(e)(3)(E)) is amended—

4 “(1) by striking ‘and’ at the end of subclause  
5 (II);

6 “(2) by striking the period at the end of sub-  
7 clause (III) and inserting ‘; and’; and

8 “(3) by adding at the end the following new  
9 subclause:

10 “(IV) obtaining lease guarantees  
11 (in accordance with regulations pro-  
12 mulgated by the Office of Public  
13 Charter School Financing).”.

14 (3) Section 342 is amended to read as follows:

15 “SEC. 342. PUBLIC SCHOOL SERVICES TO CHARTER  
16 SCHOOLS. Section 2209(b) of the District of Columbia  
17 School Reform Act of 1995 (sec. 38—1802.09(b), D.C.  
18 Official Code) is amended as follows:

19 “(1) In paragraph (1)—

20 “(A) by amending subparagraph (A) to  
21 read as follows:

22 ‘(A) IN GENERAL.—Notwithstanding any  
23 other provision of law, regulation, or order re-  
24 lating to the disposition of a facility or property  
25 described in subparagraph (B), the Mayor and



1 the District of Columbia government shall give  
2 a right of first offer with respect to any facility  
3 or property described in subparagraph (B) not  
4 previously purchased, leased, or transferred, or  
5 under contract to be purchased, leased, or  
6 transferred, or the subject of a previously pro-  
7 posed resolution submitted by the Mayor on or  
8 before December 1, 2004, to the Council of the  
9 District of Columbia seeking authority for dis-  
10 position of such facility or property, or under  
11 an Exclusive Rights Agreement executed on or  
12 before December 1, 2004, to an eligible appli-  
13 cant whose petition to establish a public charter  
14 school has been conditionally approved under  
15 section 2203(d)(2), or a Board of Trustees,  
16 with respect to the purchase, lease, transfer, or  
17 use of a facility or property described in sub-  
18 paragraph (B).’;

19 “(B) by amending subparagraph (B)(iii) to  
20 read as follows:

21 ‘(iii) with respect to which—

22 ‘(I) the Board of Education has  
23 transferred jurisdiction to the Mayor  
24 and over which the Mayor has juris-

1 diction on the effective date of this  
2 subclause; or

3 '(II) over which the Mayor or any  
4 successor agency gains jurisdiction  
5 after the effective date of this sub-  
6 clause.'; and

7 "(C) by adding at the end the following  
8 new subparagraph:

9 '(C) TERMS OF PURCHASE OR LEASE.—  
10 The terms of purchase or lease of a facility or  
11 property described in subparagraph (B) shall—

12 '(i) be negotiated by the Mayor in ac-  
13 cordance with written rules or regulations  
14 as determined by the Mayor, and published  
15 in the District of Columbia Register;

16 '(ii) include rent or an acquisition  
17 price, as applicable, that is at the ap-  
18 praised value of the property based on use  
19 of the property for school purposes; and

20 '(iii) include a lease period, if the  
21 property is to be leased, of not less than  
22 25 years, and renewable for additional 25-  
23 year periods as long as the eligible appli-  
24 cant or Board of Trustees maintains its  
25 charter.'.

1           “(2) In paragraph (2)(A), by striking ‘first  
2 preference’ and inserting ‘a right of first offer’.

3           “(3) By adding at the end the following new  
4 paragraph:

5           ‘(3)       CONVERSION       PUBLIC       CHARTER  
6 SCHOOLS.—Any District of Columbia public school  
7 that was approved to become a conversion public  
8 charter school under section 2201 before the effec-  
9 tive date of this subsection or is approved to become  
10 a conversion public charter school after the effective  
11 date of this subsection, shall have the right to exclu-  
12 sively occupy the facilities the school occupied as a  
13 District of Columbia public school under a lease for  
14 a period of not less than 25 years, renewable for ad-  
15 ditional 25-year periods as long as the school main-  
16 tains its charter at the appraised value of the prop-  
17 erty based on use of the property for school pur-  
18 poses.’”.

19           (4) Section 347 is amended by striking para-  
20 graphs (1) and (2) and inserting the following:

21           “(1) by striking subsection (f) and inserting the  
22 following:

23           ‘(f) AUDIT.—The Board shall maintain its accounts  
24 according to Generally Accepted Accounting Principles.  
25 The Board shall provide for an audit of the financial state-

1 ments of the Board by an independent certified public ac-  
2 countant in accordance with Government auditing stand-  
3 ards for financial audits issued by the Comptroller Gen-  
4 eral. The findings and recommendations of any such audit  
5 shall be forwarded to the Mayor, the Council of the Dis-  
6 trict of Columbia, and the Office of the Chief Financial  
7 Officer of the District of Columbia.'; and

8           “(2) by adding at the end the following new  
9 subsection:

10       ‘(h) CONTRACTING AND PROCUREMENT.—The Board  
11 shall have the authority to solicit, award, and execute con-  
12 tracts independently of the Office of Contracting and Pro-  
13 curement and the Chief Procurement Officer.’”.

14       (b) The amendments made by this section shall take  
15 effect as if included in the enactment of the District of  
16 Columbia Appropriations Act, 2005.

Sec. 104. The Secretary of the Department of Homeland Security shall transfer up to \$40,000,000 from funds appropriated to the Coast Guard's "Acquisition, Construction, and Improvements" account in fiscal year 2005 from the Rescue 21 project to the HH-65 re-engining project, subject to 15-day advance notification to the House and Senate Committees on Appropriations.

Sec. 105. Section 203(m) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C 5133(m)) is amended by striking "December 31, 2004" and inserting "December 31, 2005".

Sec. 106. Notwithstanding the amounts in the detailed funding table included in House Report 108-774, the appropriation for "Transportation Security Administration, Maritime and Land Security" shall include the following: "Credentialing, \$5,000,000; TWIC, \$15,000,000; Hazardous materials truck tracking, \$2,000,000; Hazardous materials safety, \$17,000,000; Enterprise staffing, \$24,000,000; Rail security, \$12,000,000; Offsetting collections, \$-27,000,000".

107.  
Sec. The matter under the heading “Military Construction, Navy and Marine Corps” in the Military Construction Appropriations Act, 2005 (division A of Public Law 108-324), is amended by striking “\$1,069,947,000” and inserting “\$1,065,597,000” and the matter under the heading “Military Construction, Naval Reserve” in such Act is amended by striking “\$44,246,000” and inserting “\$48,596,000”.

Sec. 108. Notwithstanding any other provision of law, in addition to amounts otherwise made available in the Department of Defense Appropriations Act, 2005 (Public Law 108-287), an additional \$2,000,000 is hereby appropriated and shall be made available under the heading "Shipbuilding and Conversion, Navy", only for the Secretary of the Navy for the purpose of acquiring a vessel with the Coast Guard registration number 225115: Provided, That the Secretary of the Navy shall provide for the transportation of the vessel from its present location: Provided further, That the Secretary of the Navy may lend, give, or otherwise dispose of the vessel at his election pursuant to 10 U.S.C. section 2572, 7545, or 7306, or using such procedures as the Secretary deems appropriate, and to such recipient as the Secretary deems appropriate, without regard to these provisions.

1 **SECTION 1. DESIGNATION OF NATIONAL TREE.**

2 (a) DESIGNATION.—Chapter 3 of title 36, United  
3 States Code, is amended by adding at the end the fol-  
4 lowing:

5 **“§ 305. National tree**

6 “The tree genus *Quercus*, commonly known as the  
7 oak tree, is the national tree.”.

8 (b) CONFORMING AMENDMENTS.—Such title is  
9 amended—

10 (1) in the table of contents for part A of sub-  
11 title I, by striking “, **and March**” and inserting  
12 **“March, and Tree”**;

13 (2) in the chapter heading for chapter 3, by  
14 striking “, AND MARCH” and inserting “MARCH,  
15 AND TREE”; and

16 (3) in the table of sections for chapter 3, by  
17 adding at the end the following:

“305. National tree.”.



110  
Sec 2  
**Proposed Emergency Relief Provision Regarding  
*Heinz v. Central Laborers' Pension Fund***

Section 204(g) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. § 1054(g)) shall not apply at any time, whether before or after the enactment of this section, to an amendment adopted prior to June 7, 2004 by a [multiemployer] pension plan covering primarily employees working in the State of Alaska, to the extent that such amendment --

(a) provides for the suspension of the payment of benefits, modifies the conditions under which the payment of benefits is suspended, or suspends actuarial adjustments in benefit payments in accordance with section 203(a)(3)(B) of said Act (29 U.S.C. § 1053(a)(3)(B)) and applicable regulations, and

(b) applies to participants who have not retired before the adoption of such amendment.

1        SEC. 111. (a) The head of each Federal agency or  
2 department shall—

3            (1) provide each new employee of the agency or  
4 department with educational and training materials  
5 concerning the United States Constitution as part of  
6 the orientation materials provided to the new em-  
7 ployee; and

8            (2) provide educational and training materials  
9 concerning the United States Constitution to each  
10 employee of the agency or department on September  
11 17 of each year.

12        (b) Each educational institution that receives Federal  
13 funds for a fiscal year shall hold an educational program  
14 on the United States Constitution on September 17 of  
15 such year for the students served by the educational insti-  
16 tution.

17        (c) Title 36 of the United States Code is amended—

18            (1) in section 106—

19                    (A) in the heading, by inserting “Constitu-  
20 tion Day and” before “Citizenship Day”;

21                    (B) in subsection (a), by striking “is Citi-  
22 zenship Day.” and inserting “is designated as  
23 Constitution Day and Citizenship Day.”;

24                    (C) in subsection (b)—

1 (i) by inserting “Constitution Day  
2 and” before “Citizenship Day”; and

3 (ii) by striking “commemorates” and  
4 inserting “commemorate”; and

5 (iii) by striking “recognizes” and in-  
6 serting “recognize”;

7 (D) in subsection (c), by inserting “Con-  
8 stitution Day and” before “Citizenship Day”  
9 both places where such term appears; and

10 (E) in subsection (d), by inserting “Con-  
11 stitution Day and” before “Citizenship Day”;  
12 and

13 (2) in the item relating to section 106 of the  
14 table of contents, by inserting “Constitution Day  
15 and” before “Citizenship Day”.

16 (d) This section shall be without fiscal year limita-  
17 tion.

3

~~ALASKA TELECOMMUNICATIONS AMENDMENT.~~

SEC. 102. (a) Notwithstanding any other provision of law or any contract, (1) the rates in effect on November 15, 2004, under the tariff (the "tariff") required by FCC 94-116 (reduced three percent annually starting January 1, 2006) shall apply beginning 45 days after the date of enactment of this Act through December 31, 2009, to the sale and purchase of interstate switched wholesale service elements offered by any provider originating or terminating anywhere in the area (the "market") described in section 4.7 of the tariff (collectively, the "covered services"); (2) beginning April 1, 2005, through December 31, 2009, no provider of covered services may provide, and no purchaser of such services may obtain, covered services in the same contract with services other than those that originate or terminate in the market, if the covered services in the contract represent more than five percent of such contract's total value; and (3) revenues collected hereunder (less costs) for calendar years 2005 through 2009 shall be used to support and expand the network in the market.

(b) Effective on the date of enactment of this Act, (1) the conditions described in FCC 95-334 and the related conditions imposed in FCC 94-116, FCC 95-427, and FCC 96-485, and (2) all pending proceedings relating to the tariff, shall terminate. Thereafter, the State regulatory commission with jurisdiction over the market shall treat all interexchange carriers serving the market the same with respect to the provision of intrastate services, with the goal of reducing regulation, and shall not require such carriers to file reports based on the Uniform System of Accounts.

(c) Any provider may file to enforce this section (including damages and injunctive relief) before the FCC (whose final order may be appealed under 47 U.S.C. 402(a)) or under 47 U.S.C. 207 if the FCC fails to issue a final order within 90 days of a filing. Nothing herein shall affect rate integration, carrier-of-last-resort obligations of any carrier or its successor, or the purchase of covered services by any rural telephone company (as defined in 47 U.S.C. 153(37)), or an affiliate under its control, for its provision of retail interstate interexchange services originating in the market.

Sec. 113 . Direct loans, credits, insurance and guarantees of the Export-Import Bank or its agents may be made available for or in Libya, notwithstanding section 507 or similar provisions in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, or prior acts making appropriations for foreign operations, export financing, and related programs, if the President determines that to do so is important to the national security interests of the United States.

**TECHNICAL CORRECTION**

114) **Sec. TECHNICAL CORRECTION.** (a) Section 146 of Pub.L. 108-199 is amended:

(1) by striking "section 386 of the Energy Policy Act of 2003" and inserting in lieu thereof "section 116 of Division C of Pub.L. 108-324";

(2) by striking ", except that upon that Act becoming law, section 386 is amended through this Act:" and inserting "and section 116 of Division C of Pub.L. 108-324 is amended:"

(3) by striking "paragraph 386(b)(1)" and inserting in lieu thereof "paragraph (b)(1) of section 116 of Division C of Pub.L. 108-324";

(4) by striking "paragraph 386(c)(2)" and inserting in lieu thereof "paragraph (c)(2) of section 116 of Division C of Pub.L. 108-324"; and

(5) by striking "paragraph 386(g)(4)" and inserting in lieu thereof "paragraph (g)(4) of section 116 of Division C of Pub.L. 108-324";

(b) Section 116 (b) of Division C of Pub.L. 108-324, the Military Construction bill, is amended by adding a new paragraph as follows:

"(4) Such loan guarantee may be utilized only by the project chosen by the Federal Energy Regulatory Commission as the qualified project."

115) Sec. ~~4~~. Any unobligated amount appropriated pursuant to section 353(b) of the Department of the Interior and Related Agencies Appropriations Act, 1999 (Public Law 105-277; 112 Stat. 2681-303), shall be made available to complete the project described in section 353(a) of that Act.

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1 SEC. 116. (a) DESIGNATION OF NATIONAL VET-  
2 ERANS MEMORIAL.—The Mt. Soledad Veterans Memorial  
3 located within the Soledad Natural Park in San Diego,  
4 California, which consists of a 29 foot-tall cross and sur-  
5 rounding granite memorial walls containing plaques en-  
6 graved with the names and photographs of veterans of the  
7 United States Armed Forces, is hereby designated as a  
8 national memorial honoring veterans of the United States  
9 Armed Forces.

10 (b) ACQUISITION AND ADMINISTRATION BY UNITED  
11 STATES.—Not later than 90 days after the date on which  
12 the City of San Diego, California, offers to donate the Mt.  
13 Soledad Veterans Memorial to the United States, the Sec-  
14 retary of the Interior shall accept, on behalf of the United  
15 States, all right, title, and interest of the City in and to  
16 the Mt. Soledad Veterans Memorial.

17 (c) ADMINISTRATION OF MEMORIAL.—Upon acquisi-  
18 tion of the Mt. Soledad Veterans Memorial by the United  
19 States, the Secretary of the Interior shall administer the  
20 Mt. Soledad Veterans Memorial as a unit of the National  
21 Park System, except that the Secretary shall enter into  
22 a memorandum of understanding with the Mt. Soledad  
23 Memorial Association for the continued maintenance by  
24 the Association of the cross and surrounding granite me-  
25 morial walls and plaques of the Memorial.





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1 (d) LEGAL DESCRIPTION.—The Mt. Soledad Vet-  
2 erans Memorial referred to in this section is all that por-  
3 tion of Pueblo lot 1265 of the Pueblo Lands of San Diego  
4 in the City and County of San Diego, California, according  
5 to the map thereof prepared by James Pascoe in 1879,  
6 a copy of which was filed in the office of the County Re-  
7 corder of San Diego County on November 14, 1921, and  
8 is known as miscellaneous map NO. 36, more particularly  
9 described as follows: The area bounded by the back of the  
10 existing inner sidewalk on top of Mt. Soledad, being also  
11 a circle with a radius of 84 feet, the center of which circle  
12 is located as follows: Beginning at the Southwesterly cor-  
13 ner of such Pueblo Lot 1265, such corner being South  
14 17 degrees 14'33" East (Record South 17 degrees 14'09"  
15 East) 607.21 feet distant along the westerly line of such  
16 Pueblo lot 1265 from the intersection with the North line  
17 of La Jolla Scenic Drive South as described and dedicated  
18 as parcel 2 of City Council Resolution NO. 216644 adopt-  
19 ed August 25, 1976; thence North 39 degrees 59'24" East  
20 1147.62 feet to the center of such circle. The exact bound-  
21 aries and legal description of the Mt. Soledad Veterans  
22 Memorial shall be determined by a survey prepared jointly  
23 by the City of San Diego and the Secretary of the Interior.  
24 Upon acquisition of the Mt. Soledad Veterans Memorial



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- 1 by the United States, the boundaries of the Memorial may
- 2 not be expanded.



Sec. 117 . Notwithstanding any other provision of law, except section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, \$80,000,000 of the funds appropriated for the Department of Defense for fiscal year 2005 may be transferred with the concurrence of the Secretary of Defense to the Department of State under "Peacekeeping Operations".

Sec. 18. In addition, for construction and related expenses of a facility for the United States Institute of Peace, \$100,000,000, to remain available until expended.

Sec. 119 . Notwithstanding any other provision of law, in addition to amounts otherwise provided in this or any other act for fiscal year 2005, the following amounts are appropriated: \$2,000,000 for the Helen Keller National Center for Deaf-Blind Youths and Adults for activities authorized under the Helen Keller National Center Act; and for the Department of Health and Human Services, Health Resources and Services Administration, \$1,000,000 for the Hospital for Special Surgery to establish a National Center for Musculoskeletal Research, New York, New York, for facilities and equipment; and for the Department of Health and Human Services, Health Resources and Services Administration, \$1,000,000 for the Jesse Helms Nursing Center at Union Regional Medical Center, Union County, North Carolina for facilities and equipment.

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Sec. 120. In addition to any amounts provided in this or any other Act for fiscal year 2005, \$1,000,000 is appropriated for necessary expenses of the Benjamin A. Gilman Institute for Political and International Studies program at the State University of New York's Orange County Community College in Orange, New York.

121  
SEC. ~~1022~~ WEIGHT LIMITATIONS.

The next to the last sentence of section 127(a) of title 23, United States Code, is amended by striking "Interstate Route 95" and inserting "Interstate Routes 89, 93, and 95".

1        SEC. 122. (a) ACROSS-THE-BOARD RESCISSIONS.

2        There is hereby rescinded an amount equal to 0. 1 per-  
3        cent of—

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4            (1) the budget authority provided (or obligation  
5        limitation imposed) for fiscal year 2005 for any dis-  
6        cretionary account in divisions A through J of this  
7        Act and in any other fiscal year 2005 appropriation  
8        Act (except any fiscal year 2005 supplemental ap-  
9        propriation Act, the Department of Homeland Secu-  
10       rity Appropriations Act, 2005, the Department of  
11       Defense Appropriations Act, 2005, or the Military  
12       Construction Appropriations Act, 2005);

13           (2) the budget authority provided in any ad-  
14       vance appropriation for fiscal year 2005 for any dis-  
15       cretionary account in any prior fiscal year appro-  
16       priation Act; and

17           (3) the contract authority provided in fiscal  
18       year 2005 for any program subject to limitation con-  
19       tained in any division or appropriation Act subject  
20       to paragraph (1).

21        (b) PROPORTIONATE APPLICATION.—Any rescission  
22       made by subsection (a) shall be applied proportionately—

23           (1) to each discretionary account and each item  
24       of budget authority described in such subsection;  
25       and



1           (2) within each such account and item, to each  
2       program, project, and activity (with programs,  
3       projects, and activities as delineated in the appro-  
4       priation Act or accompanying reports for the rel-  
5       evant fiscal year covering such account or item, or  
6       for accounts and items not included in appropriation  
7       Acts, as delineated in the most recently submitted  
8       President's budget).

This title may be cited as the “Miscellaneous Appropriations and Offsets Act,  
2005”.

## SECTION 1. SHORT TITLE.

*title* This Act may be cited as the '225th Anniversary of the American Revolution Commemoration Act'.

## SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds the following:

- (1) The American Revolution, inspired by the spirit of liberty and independence among the inhabitants of the original 13 colonies of Great Britain, was an event of global significance having a profound and lasting effect upon American Government, laws, culture, society, and values.
- (2) The years 2000 through 2008 mark the 225th anniversary of the Revolutionary War.
- (3) Every generation of American citizens should have an opportunity to understand and appreciate the continuing legacy of the American Revolution.
- (4) This 225th anniversary provides an opportunity to enhance public awareness and understanding of the impact of the American Revolution's legacy on the lives of citizens today.
- (5) Although the National Park Service administers battlefields, historical parks, historic sites, and programs that address elements of the story of the American Revolution, there is a need to establish partnerships that link sites and programs administered by the National Park Service with those of other Federal and non-Federal entities in order to place the story of the American Revolution in the broad context of its causes, consequences, and meanings.
- (6) The story and significance of the American Revolution can best engage the American people through a national program of the National Park Service that links historic structures and sites, routes, activities, community projects, exhibits, and multimedia materials, in a manner that is both unified and flexible.

(b) PURPOSES- The purposes of this Act are as follows:

- (1) To recognize the enduring importance of the American Revolution in the lives of American citizens today.
- (2) To authorize the National Park Service to coordinate, connect, and facilitate Federal and non-Federal activities to commemorate, honor, and interpret the history of the American Revolution, its significance, and its relevance to the shape and spirit of American Government and society.

## SEC. 3. 225TH ANNIVERSARY OF THE AMERICAN REVOLUTION COMMEMORATION PROGRAM.

(a) IN GENERAL- The Secretary of the Interior (hereinafter in this Act referred to as the 'Secretary') shall establish a program to be known as the '225th Anniversary of the American Revolution Commemoration' (hereinafter in this Act referred to as the '225th Anniversary'). In administering the 225th Anniversary, the Secretary shall--

- (1) produce and disseminate to appropriate persons educational materials, such as handbooks, maps, interpretive guides, or electronic information related to the 225th Anniversary and the American Revolution;
- (2) enter into appropriate cooperative agreements and memoranda of understanding to provide technical assistance under subsection (c);
- (3) assist in the protection of resources associated with the American Revolution;
- (4) enhance communications, connections, and collaboration among the National Park Service units and programs related to the Revolutionary War;
- (5) expand the research base for American Revolution interpretation and education; and
- (6) create and adopt an official, uniform symbol or device for the theme 'Lighting Freedom's Flame: American Revolution, 225th Anniversary' and issue regulations for its use.

(b) ELEMENTS- The 225th Anniversary shall encompass the following elements:

- (1) All units and programs of the National Park Service determined by the Secretary to pertain to the American Revolution.
- (2) Other governmental and nongovernmental sites, facilities, and programs of an educational, research, or interpretive nature that are documented to be directly related to the American Revolution.
- (3) Through the Secretary of State, the participation of the Governments of the United Kingdom, France, the Netherlands, Spain, and Canada.

(c) COOPERATIVE AGREEMENTS AND MEMORANDA OF

UNDERSTANDING- To achieve the purposes of this Act and to ensure effective coordination of the Federal and non-Federal elements of the 225th Anniversary with National Park Service units and programs, the Secretary may enter into cooperative agreements and memoranda of understanding with, and provide technical assistance to, the following:

- (1) The heads of other Federal agencies, States, units of local government, and private entities.
- (2) In cooperation with the Secretary of State, the Governments of the United Kingdom, France, the Netherlands, Spain, and Canada.

(d) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to the Secretary to carry out this Act \$500,000 for each of fiscal years 2004 through 2009.

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TITLE III - RURAL AIR  
SERVICE IMPROVEMENTS

S.L.C.

1 SEC. 1. ~~RURAL AIR SERVICE IMPROVEMENTS.~~  
title2 (a) SHORT TITLE.—This section may be cited as the  
3 “Rural Air Service Improvement Act of 2004”.4 (b) FURTHER AMENDMENTS.—The amendments  
5 made by this section are further amendments to section  
6 5402 of title 39, United States Code, including the amend-  
7 ments made by section 3002 of the 2002 Supplemental  
8 Appropriations Act for Further Recovery From and Re-  
9 sponse To Terrorist Attacks on the United States (Public  
10 Law 107-206) to that section of title 39, United States  
11 Code.12 (c) EXISTING MAINLINE CARRIERS.—Section  
13 5402(a)(10) of title 39, United States Code, is amended  
14 by striking subparagraph (C) and inserting the following:15 “(C) actually engaged in the carriage, on  
16 scheduled service within the State of Alaska, of  
17 mainline nonpriority bypass mail tendered to it  
18 under its designator code.”.19 (d) NONPRIORITY BYPASS MAIL.—Section 5402(g)  
20 of title 39, United States Code, is amended by striking  
21 the matter preceding paragraph (2) and inserting the fol-  
22 lowing:23 “(g)(1)(A) The Postal Service, in selecting carriers  
24 of nonpriority bypass mail to any point served by more  
25 than 1 carrier in the State of Alaska, shall adhere to an  
26 equitable tender policy within a qualified group of carriers,

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1 in accordance with the regulations of the Postal Service,  
2 and shall, at a minimum, require that any such carrier—

3 “(i) hold a certificate of public convenience and  
4 necessity issued under section 41102(a) of title 49;

5 “(ii) operate at least to such point at least the  
6 number of scheduled flights each week established  
7 under subparagraph (B)(i);

8 “(iii) exhibit an adherence to such scheduled  
9 flights; and

10 “(iv) have provided scheduled service with at  
11 least the number of scheduled noncontract flights  
12 each week established under subparagraph (B)(ii)  
13 between 2 points within the State of Alaska for at  
14 least 12 consecutive months with aircraft—

15 “(I) up to 7,500 pounds payload capacity  
16 before being selected as a carrier of nonpriority  
17 bypass mail at an applicable intra-Alaska bush  
18 service mail rate; and

19 “(II) over 7,500 pounds payload capacity  
20 before being selected as a carrier of nonpriority  
21 bypass mail at the intra-Alaska mainline service  
22 mail rate.

23 “(B)(i) For purposes of subparagraph (A)(ii)—

24 “(I) for aircraft described under subparagraph  
25 (A)(iv)(I) the number is 3; and

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1           “(II) for aircraft described under subparagraph  
2       (A)(iv)(II), the number is 2, except as may be pro-  
3       vided under subparagraph (C).

4       “(ii) For purposes of subparagraph (A)(iv)—

5           “(I) for aircraft described under subparagraph  
6       (A)(iv)(I), the number is 3; and

7           “(II) for aircraft described under subparagraph  
8       (A)(iv)(II), for any week in any month before the ef-  
9       fective date of the Rural Air Service Improvement  
10      Act of 2004, the number is 3, and after such date,  
11      the number is 2.

12      “(C) The Postal Service, after consultation with af-  
13      fected carriers, may establish for service by aircraft de-  
14      scribed under subparagraph (A)(iv)(II)—

15           “(i) a larger number of flights than required  
16      under subparagraph (B)(i); or

17           “(ii) the days that service will operate.”.

18      (e) SUBCONTRACTS BY EXISTING MAINLINE CAR-  
19      RIERS.—Section 5402(g)(4) of title 39, United States  
20      Code, is amended by adding at the end the following:

21           “(C) A providing carrier selected under subparagraph  
22      (A) may subcontract the transportation of nonpriority by-  
23      pass mail to another existing mainline carrier when addi-  
24      tional or substitute aircraft are temporarily needed to  
25      meet the delivery schedule of the Postal Service or the car-

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1 rier's operating requirements. The providing carrier shall  
2 remain responsible for the mail from origin through des-  
3 tination."

4 (f) AIRCRAFT PREFERENCES FOR OTHER POSTAL  
5 PRODUCTS.—Section 5402(g) of title 39, United States  
6 Code, is amended by adding at the end the following:

7 "(7) Nothing in this section shall preclude the Postal  
8 Service from establishing by regulation aircraft pref-  
9 erences for the dispatch of postal products other than non-  
10 priority bypass mail."



1  
2 ] TITLE N—VISA REFORM [

3 SEC. ~~10~~ 1. SHORT TITLE.

4 This title may be cited as the “L–1 Visa and H–1B Visa Reform Act”.

5 Subtitle A—L–1 Visa Reform

6 SEC. ~~10~~ 11. SHORT TITLE.

7 This subtitle may be cited as the “L–1 Visa (Intracompany Transferee) Reform Act of  
8 2004”.

9 SEC. ~~10~~ 12. NONIMMIGRANT L–1 VISA CATEGORY.

10 (a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C.  
11 1184(c)(2)) is amended by adding at the end the following:

12 “(F) An alien who will serve in a capacity involving specialized knowledge with  
13 respect to an employer for purposes of section 101(a)(15)(L) and will be stationed  
14 primarily at the worksite of an employer other than the petitioning employer or its  
15 affiliate, subsidiary, or parent shall not be eligible for classification under section  
16 101(a)(15)(L) if—

17 “(i) the alien will be controlled and supervised principally by such unaffiliated  
18 employer; or

19 “(ii) the placement of the alien at the worksite of the unaffiliated employer is  
20 essentially an arrangement to provide labor for hire for the unaffiliated employer,  
21 rather than a placement in connection with the provision of a product or service for  
22 which specialized knowledge specific to the petitioning employer is necessary.”.

23 (b) APPLICABILITY.—The amendment made by subsection (a) shall apply to petitions  
24 filed on or after the effective date of this subtitle, whether for initial, extended, or  
25 amended classification.

26 SEC. ~~10~~ 13. REQUIREMENT FOR PRIOR  
27 CONTINUOUS EMPLOYMENT FOR CERTAIN  
28 INTRACOMPANY TRANSFEREES.

29 (a) IN GENERAL.—Section 214(c)(2)(A) of the Immigration and Nationality Act (8  
30 U.S.C. 1184(c)(2)(A)) is amended by striking the last sentence (relating to reduction of  
31 the 1-year period of continuous employment abroad to 6 months).

32 (b) APPLICABILITY.—The amendment made by subsection (a) shall apply only to  
33 petitions for initial classification filed on or after the effective date of this subtitle.

34 SEC. ~~10~~ 14. MAINTENANCE OF STATISTICS BY THE  
35 DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—The Department of Homeland Security shall maintain statistics regarding petitions filed, approved, extended, and amended with respect to nonimmigrants described in section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)), including the number of such nonimmigrants who are classified on the basis of specialized knowledge and the number of nonimmigrants who are classified on the basis of specialized knowledge in order to work primarily at offsite locations.

(b) APPLICABILITY.—Subsection (a) shall apply to petitions filed on or after the effective date of this subtitle.

## SEC. 15. INSPECTOR GENERAL REPORT ON L VISA PROGRAM.

Not later than 6 months after the date of enactment of this Act, the Inspector General of the Department of Homeland Security shall, consistent with the authority granted the Department under section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236), examine and report to the Committees on the Judiciary of the House of Representatives and the Senate on the vulnerabilities and potential abuses in the visa program carried out under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) with respect to nonimmigrants described in section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)).

## SEC. 16. ESTABLISHMENT OF TASK FORCE.

(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, there shall be established an L Visa Interagency Task Force that consists of representatives from the Department of Homeland Security, the Department of Justice, and the Department of State. The Secretaries of each Department and each relevant bureau of the Department of Homeland Security shall appoint designees to the L Visa Interagency Task Force. The L Visa Interagency Task Force shall consult with other agencies deemed appropriate.

(b) REPORT.—Not later than 6 months after the submission of the report by the Inspector General of the Department of Homeland Security in accordance with section 6, the L Visa Interagency Task Force shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the efforts to implement the recommendations set forth by the Inspector General's report. The L Visa Interagency Task Force shall note specific areas of agreement and disagreement, and make recommendations to Congress on the findings of the Task Force, including any suggestions for legislation. The Task Force shall also review other additional issues as may be raised by the Inspector General's report or by the Task Force's own deliberations regarding the policies and purposes of the visa program relative to national goals and transnational commerce.

## SEC. 17. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect 180 days after the date of enactment of this Act.

1 Subtitle B—H-1B Visa Reform

2 SEC. 21. SHORT TITLE.

3 This subtitle may be cited as the “H-1B Visa Reform Act of 2004”.

4 SEC. 22. TEMPORARY WORKER PROVISIONS.

5 (a) ATTESTATION REQUIREMENTS FOR H-1B WORKERS.—Section 212(n)(1)(E)(ii) of  
6 the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking  
7 “October 1, 2003,”.

8 (b) H-1B EMPLOYER PETITIONS.—Section 214(c)(9) of the Immigration and  
9 Nationality Act (8 U.S.C. 1184(c)(9)) is amended—

10 (1) in subparagraph (A), by striking “October 1, 2003”;

11 (2) in subparagraph (B), by striking “\$1,000” and inserting “\$1,500”; and

12 (3) in subparagraph (B), by inserting before the period “except that the fee shall  
13 be half the amount for each such petition by any employer with not more than 25  
14 full-time equivalent employees who are employed in the United States (determined  
15 by including any affiliate or subsidiary of such employer)”.

16 SEC. 23. H-1B PREVAILING WAGE LEVEL.

17 Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended  
18 by adding at the end the following:

19 “(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A),  
20 (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant  
21 to those sections.

22 “(4) Where the Secretary of Labor uses, or makes available to employers, a  
23 governmental survey to determine the prevailing wage, such survey shall provide at least  
24 4 levels of wages commensurate with experience, education, and the level of supervision.  
25 Where an existing government survey has only 2 levels, 2 intermediate levels may be  
26 created by dividing by 3, the difference between the 2 levels offered, adding the quotient  
27 thus obtained to the first level and subtracting that quotient from the second level.”.

28 SEC. 24. DEPARTMENT OF LABOR  
29 INVESTIGATIVE AUTHORITIES.

30 (a) SECRETARY OF LABOR INVESTIGATIVE AUTHORITY.—

31 (1) IN GENERAL.—Section 212(n)(2) of the Immigration and Nationality Act (8  
32 U.S.C. 1182(n)(2)) is amended by inserting after subparagraph (F) the following:

33 “(G)(i) The Secretary of Labor may initiate an investigation of any employer that  
34 employs nonimmigrants described in section 101(a)(15)(H)(i)(b) if the Secretary of Labor  
35 has reasonable cause to believe that the employer is not in compliance with this  
36 subsection. In the case of an investigation under this clause, the Secretary of Labor (or  
37 the acting Secretary in the case of the absence of disability of the Secretary of Labor)

1 shall personally certify that reasonable cause exists and shall approve commencement of  
2 the investigation. The investigation may be initiated for reasons other than completeness  
3 and obvious inaccuracies by the employer in complying with this subsection .

4 “(ii) If the Secretary of Labor receives specific credible information from a source who  
5 is likely to have knowledge of an employer’s practices or employment conditions, or an  
6 employer’s compliance with the employer’s labor condition application under paragraph  
7 (1), and whose identity is known to the Secretary of Labor, and such information  
8 provides reasonable cause to believe that the employer has committed a willful failure to  
9 meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has  
10 engaged in a pattern or practice of failures to meet such a condition, or has committed a  
11 substantial failure to meet such a condition that affects multiple employees, the Secretary  
12 of Labor may conduct an investigation into the alleged failure or failures. The Secretary  
13 of Labor may withhold the identity of the source from the employer, and the source’s  
14 identity shall not be subject to disclosure under section 552 of title 5, United states Code.

15 “(iii) The Secretary of Labor shall establish a procedure for any person desiring to  
16 provide to the Secretary of Labor information described in clause (ii) that may be used, in  
17 whole or in part, as the basis for the commencement of an investigation described in such  
18 clause, to provide the information in writing on a form developed and provided by the  
19 Secretary of Labor and completed by or on behalf of the person. The person may not be  
20 an officer or employee of the Department of Labor, unless the information satisfies the  
21 requirement of clause (iv)(II) (although an officer or employee of the Department of  
22 Labor may complete the form on behalf of the person).

23 “(iv) Any investigation initiated or approved by the Secretary of Labor under clause  
24 (ii) shall be based on information that satisfies the requirements of such clause and that—

25 “(I) originates from a source other than an officer or employee of the Department  
26 of Labor; or

27 “(II) was lawfully obtained by the Secretary of Labor in the course of lawfully  
28 conducting another Department of Labor investigation under this Act of any other  
29 Act.

30 “(v) The receipt by the Secretary of Labor of information submitted by an employer to  
31 the Attorney General or the Secretary of Labor for purposes of securing the employment  
32 of a nonimmigrant described in section 101(a)(15)(H)(i)(b) shall not be considered a  
33 receipt of information for purposes of clause (ii).

34 “(vi) No investigation described in clause (ii) (or hearing described in clause (viii)  
35 based on such investigation) may be conducted with respect to information about a  
36 failure to meet a condition described in clause (ii), unless the Secretary of Labor receives  
37 the information not later than 12 months after the date of the alleged failure.

38 “(vii) The Secretary of Labor shall provide notice to an employer with respect to whom  
39 there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior  
40 to the commencement of an investigation under such clauses, of the intent to conduct an  
41 investigation. The notice shall be provided in such a manner, and shall contain sufficient  
42 detail, to permit the employer to respond to the allegations before an investigation is  
43 commenced. The Secretary of Labor is not required to comply with this clause if the

1 Secretary of Labor determines that to do so would interfere with an effort by the  
2 Secretary of Labor to secure compliance by the employer with the requirements of this  
3 subsection. There shall be no judicial review of a determination by the Secretary of Labor  
4 under this clause.

5 “(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to  
6 60 days. If the Secretary of Labor determines after such an investigation that a reasonable  
7 basis exists to make a finding that the employer has committed a willful failure to meet a  
8 condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged  
9 in a pattern or practice of failures to meet such a condition, or has committed a  
10 substantial failure to meet such a condition that affects multiple employees, the Secretary  
11 of Labor shall provide for notice of such determination to the interested parties and an  
12 opportunity for a hearing in accordance with section 556 of title 5, United States Code,  
13 within 120 days after the date of the determination. If such a hearing is requested, the  
14 Secretary of Labor shall make a finding concerning the matter by not later than 120 days  
15 after the date of the hearing.”.

16 (2) RETROACTIVE.—The amendment made by paragraph (1) shall take effect as if  
17 enacted on October 1, 2003.

18 (b) GOOD FAITH COMPLIANCE OR CONFORMITY.—Section 212(n)(2) of the Immigration  
19 and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

20 (1) by redesignating subparagraph (H) as subparagraph (I); and

21 (2) by inserting after subparagraph (G), as added by subsection (a)(1), the  
22 following:

23 “(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to  
24 have complied with the requirements of this subsection, notwithstanding a technical or  
25 procedural failure to meet such requirements, if there was a good faith attempt to comply  
26 with the requirements.

27 “(ii) Clause (i) shall not apply if—

28 “(I) the Department of Labor (or another enforcement agency) has explained to  
29 the person or entity the basis for the failure;

30 “(II) the person or entity has been provided a period of not less than 10 business  
31 days (beginning after the date of the explanation) within which to correct the failure;  
32 and

33 “(III) the person or entity has not corrected the failure voluntarily within such  
34 period.

35 “(iii) A person or entity that, in the course of an investigation, is found to have  
36 violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be  
37 assessed fines or other penalties for such violation if the person or entity can  
38 establish that the manner in which the prevailing wage was calculated was consistent  
39 with recognized industry standards and practices.

40 “(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in  
41 or is engaging in a pattern or practice of willful violations this subsection.”.

(c) SECRETARY OF LABOR REPORT.—Not later than January 31 of each year, the Secretary of Labor shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the investigations undertaken based on—

(1) the authorities described in clauses (i) and (ii) of section 212(n)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(G)(i) and (ii)); and

(2) the expenditures by the Secretary of Labor described in section 286(v)(2)(D) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(D)).

## SEC. 25. EXEMPTION OF CERTAIN ALIENS FROM NUMERICAL LIMITATIONS ON H-1B NONIMMIGRANTS.

(a) IN GENERAL.—Section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) is amended—

(1) in the matter preceding subparagraph (A), by striking “is employed (or has received an offer of employment) at”;

(2) in subparagraph (A)—

(A) by inserting “is employed (or has received an offer of employment) at” before “an institution”; and

(B) by striking “or” at the end;

(3) in subparagraph (B)—

(A) by inserting “is employed (or has received an offer of employment) at” before “a nonprofit”; and

(B) by striking the period and inserting “; or”; and

(4) by adding at the end the following:

“(C) has earned a master’s or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.”.

(b) STATISTICS.—Beginning on the date of enactment of this Act, the Secretary of Homeland Security shall maintain statistical information on the country of origin and occupation of, educational level maintained by, and compensation paid to, each alien who is issued a visa or otherwise provided nonimmigrant status and is exempt under section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) for each fiscal year. The statistical information shall be included in the annual report to Congress under section 416(c) of the American Competitiveness and Workforce Improvement Act of 1998 (Public Law 105–277; 112 Stat. 2681–655).

## SEC. 26. FRAUD PREVENTION AND DETECTION FEE.

1 (a) Imposition of Fee.—Section 214(c) of the Immigration and Nationality Act (8  
2 U.S.C. 1184(c)) is amended by adding at the end the following:

3 “(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland  
4 Security shall impose a fraud prevention and detection fee on an employer filing a  
5 petition under paragraph (1)—

6 “(i) initially to grant an alien nonimmigrant status described in subparagraph  
7 (H)(i)(b) or (L) of section 101(a)(15); or

8 “(ii) to obtain authorization for an alien having such status to change employers.

9 “(B) In addition to any other fees authorized by law, the Secretary of State shall  
10 impose a fraud prevention and detection fee on an alien filing an application abroad for a  
11 visa authorizing admission to the United States as a nonimmigrant described in section  
12 101(a)(15)(L), if the alien is covered under a blanket petition described in paragraph  
13 (2)(A).

14 “(C) The amount of the fee imposed under subparagraph (A) or (B) shall be \$500.

15 “(D) The fee imposed under subparagraph (A) or (B) shall only apply to principal  
16 aliens and not to the spouses or children who are accompanying or following to join such  
17 principal aliens.

18 “(E) Fees collected under this paragraph shall be deposited in the Treasury in  
19 accordance with section 286(v).”.

20 (b) Establishment of Account; Use of Fees.—Section 286 of the Immigration and  
21 Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

22 “(v) H–1B and L Fraud Prevention and Detection Account.—

23 “(1) In general.—There is established in the general fund of the Treasury a  
24 separate account, which shall be known as the ‘H–1B and L Fraud Prevention and  
25 Detection Account’. Notwithstanding any other provision of law, there shall be  
26 deposited as offsetting receipts into the account all fees collected under section  
27 214(c)(12).

28 “(2) Use of fees to combat fraud.—

29 “(A) Secretary of state.—One-third of the amounts deposited into the H–1B  
30 and L Fraud Prevention and Detection Account shall remain available to the  
31 Secretary of State until expended for programs and activities at United States  
32 embassies and consulates abroad—

33 “(i) to increase the number diplomatic security personnel assigned  
34 exclusively to the function of preventing and detecting fraud by applicants  
35 for visas described in subparagraph (H)(i) or (L) of section 101(a)(15);

36 “(ii) otherwise to prevent and detect such fraud pursuant to the terms of  
37 a memorandum of understanding or other cooperative agreement between  
38 the Secretary of State and the Secretary of Homeland Security; and

39 “(iii) upon request by the Secretary of Homeland Security, to assist such  
40 Secretary in carrying out the fraud prevention and detection programs and

activities described in subparagraph (B).

“(B) Secretary of homeland security.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in subparagraph (H)(i) or (L) of section 101(a)(15).

“(C) Secretary of labor.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for enforcement programs and activities described in section 212(n).

“(D) Consultation.—The Secretary of State, the Secretary of Homeland Security, and the Secretary of Labor shall consult one another with respect to the use of the funds in the H–1B and L Fraud Prevention and Detection Account.”.

(c) Effective Date.—The amendments made by this section shall take effect on the date of enactment of this Act, and the fees imposed under such amendments shall apply to petitions under section 214(c) of the Immigration and Nationality Act, and applications for nonimmigrant visas under section 222 of such Act, filed on or after the date that is 90 days after the date of the enactment of this Act.

## SEC. 27. CHANGE OF FEE FORMULA.

Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended—

(1) in paragraph (2), by striking “55 percent” and inserting “50 percent”;

(2) in paragraph (3), by striking “22 percent” and inserting “30 percent”;

(3) in paragraph (4)(A), by striking “15 percent” and inserting “10 percent”;

(4) in paragraph (5)—

(A) by striking “4 percent” and inserting “5 percent”; and

(B) by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”; and

(5) in paragraph (6), by striking “Beginning with fiscal year 2000,” and all that follows through “within a 7-day period.” and inserting “Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 212(n)(1).”.

## SEC. 28. GRANTS FOR JOB TRAINING FOR EMPLOYMENT IN HIGH GROWTH INDUSTRIES.

Section 414(c) of the American Competitiveness and Workforce Improvement Act of



1998 (112 Stat. 2681–653) is amended to read as follows:

“(c) JOB TRAINING GRANTS.—

“(1) IN GENERAL.—The Secretary of Labor shall use funds available under section 286(s)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(2)) to award grants to eligible entities to provide job training and related activities for workers to assist them in obtaining or upgrading employment in industries and economic sectors identified pursuant to paragraph (4) that are projected to experience significant growth and ensure that job training and related activities funded by such grants are coordinated with the public workforce investment system.

“(2) USE OF FUNDS.—

“(A) TRAINING PROVIDED.—Funds under this subsection may be used to provide job training services and related activities that are designed to assist workers (including unemployed and employed workers) in gaining the skills and competencies needed to obtain or upgrade career ladder employment positions in the industries and economic sectors identified pursuant to paragraph (4).

“(B) ENHANCED TRAINING PROGRAMS AND INFORMATION.—In order to facilitate the provision of job training services described in subparagraph (A), funds under this subsection may be used to assist in the development and implementation of model activities such as developing appropriate curricula to build core competencies and train workers, identifying and disseminating career and skill information, and increasing the integration of community and technical college activities with activities of businesses and the public workforce investment system to meet the training needs for the industries and economic sectors identified pursuant to paragraph (4).

“(3) ELIGIBLE ENTITIES.—Grants under this subsection may be awarded to partnerships of private and public sector entities, which may include—

“(A) businesses or business-related nonprofit organizations, such as trade associations;

“(B) education and training providers, including community colleges and other community-based organizations; and

“(C) entities involved in administering the workforce investment system established under title I of the Workforce Investment Act of 1998, and economic development agencies.

“(4) HIGH GROWTH INDUSTRIES AND ECONOMIC SECTORS.—For purposes of this subsection, the Secretary of Labor, in consultation with State workforce investment boards, shall identify industries and economic sectors that are projected to experience significant growth, taking into account appropriate factors, such as the industries and sectors that—

“(A) are projected to add substantial numbers of new jobs to the economy;

“(B) are being transformed by technology and innovation requiring new skill

sets for workers;

“(C) are new and emerging businesses that are projected to grow; or

“(D) have a significant impact on the economy overall or on the growth of other industries and economic sectors.

“(5) EQUITABLE DISTRIBUTION.—In awarding grants under this subsection, the Secretary of Labor shall ensure an equitable distribution of such grants across geographically diverse areas.

“(6) LEVERAGING OF RESOURCES AND AUTHORITY TO REQUIRE MATCH.—

“(A) LEVERAGING OF RESOURCES.—In awarding grants under this subsection, the Secretary of Labor shall take into account, in addition to other factors the Secretary determines are appropriate—

“(i) the extent to which resources other than the funds provided under this subsection will be made available by the eligible entities applying for grants to support the activities carried out under this subsection; and

“(ii) the ability of such entities to continue to carry out and expand such activities after the expiration of the grants.

“(B) AUTHORITY TO REQUIRE MATCH.—The Secretary of Labor may require the provision of specified levels of a matching share of cash or noncash resources from resources other than the funds provided under this subsection for projects funded under this subsection.

“(7) PERFORMANCE ACCOUNTABILITY.—The Secretary of Labor shall require grantees to report on the employment outcomes obtained by workers receiving training under this subsection using indicators of performance that are consistent with other indicators used for employment and training programs administered by the Secretary, such as entry into employment, retention in employment, and increases in earnings. The Secretary of Labor may also require grantees to participate in evaluations of projects carried out under this subsection.”.

## SEC. 29. NATIONAL SCIENCE FOUNDATION LOW-INCOME SCHOLARSHIP PROGRAM.

(a) EXPANSION OF ELIGIBILITY.—Section 414(d)(2)(A)(iii) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(2)(A)(iii)) is amended by striking “or computer science.” and inserting “computer science, or other technology and science programs designated by the Director.”.

(b) INCREASE IN AWARD AMOUNT.—Section 414(d)(3) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(3)) is amended by striking “\$3,125 per year” and inserting “\$10,000 per year”.

(c) FUNDS.—Section 414(d)(4) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(4)) is amended by adding at the end the following: “The Director may use no more than 50 percent of such funds for

1 undergraduate programs for curriculum development, professional and workforce  
2 development, and to advance technological education. Funds for these other programs  
3 may be used for purposes other than scholarships.”.

4 (d) PUBLICATION OF ELIGIBLE PROGRAMS.—Section 414(d) of the American  
5 Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)) is  
6 amended by adding at the end the following:

7 “(5) FEDERAL REGISTER.—Not later than 60 days after the date of enactment of  
8 the L–1 Visa and H–1B Visa Reform Act, the Director shall publish in the Federal  
9 Register a list of eligible programs of study.”.

## 10 SEC. <sup>2014-25</sup>30. EFFECTIVE DATES.

11 (a) IN GENERAL.—Except as provided in subsection (b), this subtitle and the  
12 amendments made by this subtitle shall take effect 90 days after the date of enactment of  
13 this Act.

14 (b) EXCEPTIONS.—The amendments made by sections \_\_22(b), \_\_26(a), and \_\_27 shall  
15 take effect upon the date of enactment of this Act.  
16

**AMENDMENT TO H.R.****OFFERED BY MR. HOBSON OF OHIO**

~~At the end of the bill, insert the following:~~

1 **TITLE   ✓  —NATIONAL AVIATION**  
2 **HERITAGE AREA**

3 **SEC.   1  . SHORT TITLE.**

4       This title may be cited as the “National Aviation  
5 Heritage Area Act”.

6 **SEC.   2  . FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—Congress finds the following:

8           (1) Few technological advances have trans-  
9 formed the world or our Nation’s economy, society,  
10 culture, and national character as the development  
11 of powered flight.

12           (2) The industrial, cultural, and natural herit-  
13 age legacies of the aviation and aerospace industry  
14 in the State of Ohio are nationally significant.

15           (3) Dayton, Ohio, and other defined areas  
16 where the development of the airplane and aerospace  
17 technology established our Nation’s leadership in  
18 both civil and military aeronautics and astronautics  
19 set the foundation for the 20th Century to be an  
20 American Century.



1           (4) Wright-Patterson Air Force Base in Day-  
2           ton, Ohio, is the birthplace, the home, and an inte-  
3           gral part of the future of aerospace.

4           (5) The economic strength of our Nation is con-  
5           nected integrally to the vitality of the aviation and  
6           aerospace industry, which is responsible for an esti-  
7           mated 11,200,000 American jobs.

8           (6) The industrial and cultural heritage of the  
9           aviation and aerospace industry in the State of Ohio  
10          includes the social history and living cultural tradi-  
11          tions of several generations.

12          (7) The Department of the Interior is respon-  
13          sible for protecting and interpreting the Nation's  
14          cultural and historic resources, and there are signifi-  
15          cant examples of these resources within Ohio to  
16          merit the involvement of the Federal Government to  
17          develop programs and projects in cooperation with  
18          the Aviation Heritage Foundation, Incorporated, the  
19          State of Ohio, and other local and governmental en-  
20          tities to adequately conserve, protect, and interpret  
21          this heritage for the educational and recreational  
22          benefit of this and future generations of Americans,  
23          while providing opportunities for education and revi-  
24          talization.



1           (8) Since the enactment of the Dayton Aviation  
2       Heritage Preservation Act of 1992 (Public Law  
3       102-419), partnerships among the Federal, State,  
4       and local governments and the private sector have  
5       greatly assisted the development and preservation of  
6       the historic aviation resources in the Miami Valley.

7           (9) An aviation heritage area centered in  
8       Southwest Ohio is a suitable and feasible manage-  
9       ment option to increase collaboration, promote herit-  
10      age tourism, and build on the established partner-  
11      ships among Ohio's historic aviation resources and  
12      related sites.

13          (10) A critical level of collaboration among the  
14      historic aviation resources in Southwest Ohio cannot  
15      be achieved without a congressionally established na-  
16      tional heritage area and the support of the National  
17      Park Service and other Federal agencies which own  
18      significant historic aviation-related sites in Ohio.

19          (11) The Aviation Heritage Foundation, Incor-  
20      porated, would be an appropriate management entity  
21      to oversee the development of the National Aviation  
22      Heritage Area.

23          (12) Five National Park Service and Dayton  
24      Aviation Heritage Commission studies and planning  
25      documents: "Study of Alternatives: Dayton's Avia-



1 tion Heritage”, “Dayton Aviation Heritage National  
2 Historical Park Suitability/Feasibility Study”, “Day-  
3 ton Aviation Heritage General Management Plan”,  
4 “Dayton Historic Resources Preservation and Devel-  
5 opment Plan”, and Heritage Area Concept Study,  
6 demonstrated that sufficient historical resources  
7 exist to establish the National Aviation Heritage  
8 Area.

9 (13) With the advent of the 100th anniversary  
10 of the first powered flight in 2003, it is recognized  
11 that the preservation of properties nationally signifi-  
12 cant in the history of aviation is an important goal  
13 for the future education of Americans.

14 (14) Local governments, the State of Ohio, and  
15 private sector interests have embraced the heritage  
16 area concept and desire to enter into a partnership  
17 with the Federal government to preserve, protect,  
18 and develop the Heritage Area for public benefit.

19 (15) The National Aviation Heritage Area  
20 would complement and enhance the aviation-related  
21 resources within the National Park Service, espe-  
22 cially the Dayton Aviation Heritage National Histor-  
23 ical Park, Ohio.

24 (b) PURPOSE.—The purpose of this title is to estab-  
25 lish the Heritage Area to—



1           (1) encourage and facilitate collaboration  
2           among the facilities, sites, organizations, govern-  
3           mental entities, and educational institutions within  
4           the Heritage Area to promote heritage tourism and  
5           to develop educational and cultural programs for the  
6           public;

7           (2) preserve and interpret for the educational  
8           and inspirational benefit of present and future gen-  
9           erations the unique and significant contributions to  
10          our national heritage of certain historic and cultural  
11          lands, structures, facilities, and sites within the Na-  
12          tional Aviation Heritage Area;

13          (3) encourage within the National Aviation  
14          Heritage Area a broad range of economic opportuni-  
15          ties enhancing the quality of life for present and fu-  
16          ture generations;

17          (4) provide a management framework to assist  
18          the State of Ohio, its political subdivisions, other  
19          areas, and private organizations, or combinations  
20          thereof, in preparing and implementing an inte-  
21          grated Management Plan to conserve their aviation  
22          heritage and in developing policies and programs  
23          that will preserve, enhance, and interpret the cul-  
24          tural, historical, natural, recreation, and scenic re-  
25          sources of the Heritage Area; and





1           (5) authorize the Secretary to provide financial  
2           and technical assistance to the State of Ohio, its po-  
3           litical subdivisions, and private organizations, or  
4           combinations thereof, in preparing and implementing  
5           the private Management Plan.

6 **SEC. 3. DEFINITIONS.**

7           For purposes of this title:

8           (1) BOARD.—The term “Board” means the  
9           Board of Directors of the Foundation.

10          (2) FINANCIAL ASSISTANCE.—The term “finan-  
11          cial assistance” means funds appropriated by Con-  
12          gress and made available to the management entity  
13          for the purpose of preparing and implementing the  
14          Management Plan.

15          (3) HERITAGE AREA.—The term “Heritage  
16          Area” means the National Aviation Heritage Area  
17          established by section 104 to receive, distribute, and  
18          account for Federal funds appropriated for the pur-  
19          pose of this title.

20          (4) MANAGEMENT PLAN.—The term “Manage-  
21          ment Plan” means the management plan for the  
22          Heritage Area developed under section 106.

23          (5) MANAGEMENT ENTITY.—The term “man-  
24          agement entity” means the Aviation Heritage Foun-



1        dation, Incorporated (a nonprofit corporation estab-  
2        lished under the laws of the State of Ohio).

3            (6) PARTNER.—The term “partner” means a  
4        Federal, State, or local governmental entity, organi-  
5        zation, private industry, educational institution, or  
6        individual involved in promoting the conservation  
7        and preservation of the cultural and natural re-  
8        sources of the Heritage Area.

9            (7) SECRETARY.—The term “Secretary” means  
10       the Secretary of the Interior.

11           (8) TECHNICAL ASSISTANCE.—The term “tech-  
12       nical assistance” means any guidance, advice, help,  
13       or aid, other than financial assistance, provided by  
14       the Secretary.

15   **SEC. 4. NATIONAL AVIATION HERITAGE AREA.**

16        (a) ESTABLISHMENT.—There is established in the  
17       States of Ohio and Indiana, the National Aviation Herit-  
18       age Area.

19        (b) BOUNDARIES.—The Heritage Area shall include  
20       the following:

21           (1) A core area consisting of resources in Mont-  
22       gomery, Greene, Warren, Miami, Clark, Champaign,  
23       Shelby, and Auglaize Counties in Ohio.

24           (2) The Neil Armstrong Air & Space Museum,  
25       Wapakoneta, Ohio.



1 (3) Sites, buildings, and districts within the  
2 core area recommended by the Management Plan.

3 (c) MAP.—A map of the Heritage Area shall be in-  
4 cluded in the Management Plan. The map shall be on file  
5 in the appropriate offices of the National Park Service,  
6 Department of the Interior.

7 (d) MANAGEMENT ENTITY.—The management entity  
8 for the Heritage Area shall be the Aviation Heritage  
9 Foundation.

10 SEC. <sup>5</sup>  . **AUTHORITIES AND DUTIES OF THE MANAGE-**  
11 **MENT ENTITY.**

12 (a) AUTHORITIES.—For purposes of implementing  
13 the Management Plan, the management entity may use  
14 Federal funds made available through this title to—

15 (1) make grants to, and enter into cooperative  
16 agreements with, the State of Ohio and political sub-  
17 divisions of that State, private organizations, or any  
18 person;

19 (2) hire and compensate staff; and

20 (3) enter into contracts for goods and services.

21 (b) DUTIES.—The management entity shall—

22 (1) develop and submit to the Secretary for ap-  
23 proval the proposed Management Plan in accordance  
24 with section 106;



1           (2) give priority to implementing actions set  
2       forth in the Management Plan, including taking  
3       steps to assist units of government and nonprofit or-  
4       ganizations in preserving resources within the Herit-  
5       age Area;

6           (3) consider the interests of diverse govern-  
7       mental, business, and nonprofit groups within the  
8       Heritage Area in developing and implementing the  
9       Management Plan;

10          (4) maintain a collaboration among the part-  
11       ners to promote heritage tourism and to assist part-  
12       ners to develop educational and cultural programs  
13       for the public;

14          (5) encourage economic viability in the Heritage  
15       Area consistent with the goals of the Management  
16       Plan;

17          (6) assist units of government and nonprofit or-  
18       ganizations in—

19                (A) establishing and maintaining interpre-  
20       tive exhibits in the Heritage Area;

21                (B) developing recreational resources in  
22       the Heritage Area;

23                (C) increasing public awareness of and ap-  
24       preciation for the historical, natural, and archi-



1 tectural resources and sites in the Heritage  
2 Area; and

3 (D) restoring historic buildings that relate  
4 to the purposes of the Heritage Area;

5 (7) conduct public meetings at least quarterly  
6 regarding the implementation of the Management  
7 Plan;

8 (8) submit substantial amendments to the Man-  
9 agement Plan to the Secretary for the approval of  
10 the Secretary; and

11 (9) for any year in which Federal funds have  
12 been received under this title—

13 (A) submit an annual report to the Sec-  
14 retary that sets forth the accomplishments of  
15 the management entity and its expenses and in-  
16 come;

17 (B) make available to the Secretary for  
18 audit all records relating to the expenditure of  
19 such funds and any matching funds; and

20 (C) require, with respect to all agreements  
21 authorizing expenditure of Federal funds by  
22 other organizations, that the receiving organiza-  
23 tions make available to the Secretary for audit  
24 all records concerning the expenditure of such  
25 funds.



1 (c) USE OF FEDERAL FUNDS.—

2 (1) IN GENERAL.—The management entity  
3 shall not use Federal funds received under this title  
4 to acquire real property or an interest in real prop-  
5 erty.

6 (2) OTHER SOURCES.—Nothing in this title  
7 precludes the management entity from using Federal  
8 funds from other sources for authorized purposes.

9 SEC. 6. MANAGEMENT PLAN.

10 (a) PREPARATION OF PLAN.—Not later than 3 years  
11 after the date of the enactment of this title, the manage-  
12 ment entity shall submit to the Secretary for approval a  
13 proposed Management Plan that shall take into consider-  
14 ation State and local plans and involve residents, public  
15 agencies, and private organizations in the Heritage Area.

16 (b) CONTENTS.—The Management Plan shall incor-  
17 porate an integrated and cooperative approach for the pro-  
18 tection, enhancement, and interpretation of the natural,  
19 cultural, historic, scenic, and recreational resources of the  
20 Heritage Area and shall include the following:

21 (1) An inventory of the resources contained in  
22 the core area of the Heritage Area, including the  
23 Dayton Aviation Heritage Historical Park, the sites,  
24 buildings, and districts listed in section 202 of the  
25 Dayton Aviation Heritage Preservation Act of 1992



1 (Public Law 102-419), and any other property in  
2 the Heritage Area that is related to the themes of  
3 the Heritage Area and that should be preserved, re-  
4 stored, managed, or maintained because of its sig-  
5 nificance.

6 (2) An assessment of cultural landscapes within  
7 the Heritage Area.

8 (3) Provisions for the protection, interpretation,  
9 and enjoyment of the resources of the Heritage Area  
10 consistent with the purposes of this title.

11 (4) An interpretation plan for the Heritage  
12 Area.

13 (5) A program for implementation of the Man-  
14 agement Plan by the management entity, including  
15 the following:

16 (A) Facilitating ongoing collaboration  
17 among the partners to promote heritage tour-  
18 ism and to develop educational and cultural  
19 programs for the public.

20 (B) Assisting partners planning for res-  
21 toration and construction.

22 (C) Specific commitments of the partners  
23 for the first 5 years of operation.

24 (6) The identification of sources of funding for  
25 implementing the plan.



1           (7) A description and evaluation of the manage-  
2       ment entity, including its membership and organiza-  
3       tional structure.

4       (c) DISQUALIFICATION FROM FUNDING.—If a pro-  
5       posed Management Plan is not submitted to the Secretary  
6       within 3 years of the date of the enactment of this title,  
7       the management entity shall be ineligible to receive addi-  
8       tional funding under this title until the date on which the  
9       Secretary receives the proposed Management Plan.

10      (d) APPROVAL AND DISAPPROVAL OF MANAGEMENT  
11      PLAN.—The Secretary, in consultation with the State of  
12      Ohio, shall approve or disapprove the proposed Manage-  
13      ment Plan submitted under this title not later than 90  
14      days after receiving such proposed Management Plan.

15      (e) ACTION FOLLOWING DISAPPROVAL.—If the Sec-  
16      retary disapproves a proposed Management Plan, the Sec-  
17      retary shall advise the management entity in writing of  
18      the reasons for the disapproval and shall make rec-  
19      ommendations for revisions to the proposed Management  
20      Plan. The Secretary shall approve or disapprove a pro-  
21      posed revision within 90 days after the date it is sub-  
22      mitted.

23      (f) APPROVAL OF AMENDMENTS.—The Secretary  
24      shall review and approve substantial amendments to the  
25      Management Plan. Funds appropriated under this title





1 may not be expended to implement any changes made by  
2 such amendment until the Secretary approves the amend-  
3 ment.

4 **SEC. 7. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER**  
5 **FEDERAL AGENCIES.**

6 (a) TECHNICAL AND FINANCIAL ASSISTANCE.—Upon  
7 the request of the management entity, the Secretary may  
8 provide technical assistance, on a reimbursable or non-  
9 reimbursable basis, and financial assistance to the Herit-  
10 age Area to develop and implement the management plan.  
11 The Secretary is authorized to enter into cooperative  
12 agreements with the management entity and other public  
13 or private entities for this purpose. In assisting the Herit-  
14 age Area, the Secretary shall give priority to actions that  
15 in general assist in—

16 (1) conserving the significant natural, historic,  
17 cultural, and scenic resources of the Heritage Area;  
18 and

19 (2) providing educational, interpretive, and rec-  
20 reational opportunities consistent with the purposes  
21 of the Heritage Area.

22 (b) DUTIES OF OTHER FEDERAL AGENCIES.—Any  
23 Federal agency conducting or supporting activities directly  
24 affecting the Heritage Area shall—



1 (1) consult with the Secretary and the manage-  
2 ment entity with respect to such activities;

3 (2) cooperate with the Secretary and the man-  
4 agement entity in carrying out their duties under  
5 this title;

6 (3) to the maximum extent practicable, coordi-  
7 nate such activities with the carrying out of such du-  
8 ties; and

9 (4) to the maximum extent practicable, conduct  
10 or support such activities in a manner which the  
11 management entity determines will not have an ad-  
12 verse effect on the Heritage Area.

13 **SEC. 8. COORDINATION BETWEEN THE SECRETARY AND**  
14 **THE SECRETARY OF DEFENSE AND THE AD-**  
15 **MINISTRATOR OF NASA.**

16 The decisions concerning the execution of this title  
17 as it applies to properties under the control of the Sec-  
18 retary of Defense and the Administrator of the National  
19 Aeronautics and Space Administration shall be made by  
20 such Secretary or such Administrator, in consultation with  
21 the Secretary of the Interior.

22 **SEC. 9. REQUIREMENTS FOR INCLUSION OF PRIVATE**  
23 **PROPERTY.**

24 (a) NOTIFICATION AND CONSENT OF PROPERTY  
25 OWNERS REQUIRED.—No privately owned property shall



1 be preserved, conserved, or promoted by the management  
2 plan for the Heritage Area until the owner of that private  
3 property has been notified in writing by the management  
4 entity and has given written consent for such preservation,  
5 conservation, or promotion to the management entity.

6 (b) LANDOWNER WITHDRAW.—Any owner of private  
7 property included within the boundary of the Heritage  
8 Area shall have their property immediately removed from  
9 the boundary by submitting a written request to the man-  
10 agement entity.

11 **SEC. <sup>10</sup> PRIVATE PROPERTY PROTECTION.**

12 (a) ACCESS TO PRIVATE PROPERTY.—Nothing in  
13 this title shall be construed to—

14 (1) require any private property owner to allow  
15 public access (including Federal, State, or local gov-  
16 ernment access) to such private property; or

17 (2) modify any provision of Federal, State, or  
18 local law with regard to public access to or use of  
19 private property.

20 (b) LIABILITY.—Designation of the Heritage Area  
21 shall not be considered to create any liability, or to have  
22 any effect on any liability under any other law, of any pri-  
23 vate property owner with respect to any persons injured  
24 on such private property.



1 (c) RECOGNITION OF AUTHORITY TO CONTROL  
2 LAND USE.—Nothing in this title shall be construed to  
3 modify the authority of Federal, State, or local govern-  
4 ments to regulate land use.

5 (d) PARTICIPATION OF PRIVATE PROPERTY OWNERS  
6 IN HERITAGE AREA.—Nothing in this title shall be con-  
7 strued to require the owner of any private property located  
8 within the boundaries of the Heritage Area to participate  
9 in or be associated with the Heritage Area.

10 (e) EFFECT OF ESTABLISHMENT.—The boundaries  
11 designated for the Heritage Area represent the area within  
12 which Federal funds appropriated for the purpose of this  
13 title may be expended. The establishment of the Heritage  
14 Area and its boundaries shall not be construed to provide  
15 any nonexisting regulatory authority on land use within  
16 the Heritage Area or its viewshed by the Secretary, the  
17 National Park Service, or the management entity.

18 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) IN GENERAL.—To carry out this title there is au-  
20 thorized to be appropriated \$10,000,000, except that not  
21 more than \$1,000,000 may be appropriated to carry out  
22 this title for any fiscal year.

23 (b) FIFTY PERCENT MATCH.—The Federal share of  
24 the cost of activities carried out using any assistance or  
25 grant under this title shall not exceed 50 percent.



1 SEC. 12. SUNSET PROVISION.

2 The authority of the Secretary to provide assistance  
3 under this title terminates on the date that is 15 years  
4 after the date that funds are first made available for this  
5 title.

6 ~~TITLE~~ ~~WRIGHT COMPANY~~  
7 ~~FACTORY STUDY~~

8 SEC. 13 <sup>WRIGHT COMPANY FACTORY STUDY</sup> STUDY AND REPORT.

9 (a) STUDY.—

10 (1) IN GENERAL.—The Secretary shall conduct  
11 a special resource study updating the study required  
12 under section 104 of the Dayton Aviation Heritage  
13 Preservation Act of 1992 (Public Law 102–419) and  
14 detailing alternatives for incorporating the Wright  
15 Company factory as a unit of Dayton Aviation Her-  
16 itage National Historical Park.

17 (2) CONTENTS.—The study shall include an  
18 analysis of alternatives for including the Wright  
19 Company factory as a unit of Dayton Aviation Her-  
20 itage National Historical Park that detail manage-  
21 ment and development options and costs.

22 (3) CONSULTATION.—In conducting the study,  
23 the Secretary shall consult with the Delphi Corpora-  
24 tion, the Aviation Heritage Foundation, State and  
25 local agencies, and other interested parties in the  
26 area.



1 (b) REPORT.—Not later than 3 years after funds are  
2 first made available for this section, the Secretary shall  
3 submit to the Committee on Resources of the House of  
4 Representatives and the Committee on Energy and Nat-  
5 ural Resources of the Senate a report describing the re-  
6 sults of the study conducted under this section.



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**To establish certain National Heritage Areas, and for other purposes. (Engrossed as Agreed to or Passed by House)**

**TITLE ~~VI~~ OIL REGION NATIONAL HERITAGE AREA**

**SEC. ~~701~~ 1. SHORT TITLE; DEFINITIONS.**

(a) SHORT TITLE- This title may be cited as the 'Oil Region National Heritage Area Act'.

(b) DEFINITIONS- For the purposes of this title, the following definitions shall apply:

(1) HERITAGE AREA- The term 'Heritage Area' means the Oil Region National Heritage Area established in section ~~703~~ 3(a).

(2) MANAGEMENT ENTITY- The term 'management entity' means the Oil Heritage Region, Inc., or its successor entity.

(3) SECRETARY- The term 'Secretary' means the Secretary of the Interior.

**SEC. ~~702~~ 2. FINDINGS AND PURPOSE.**

(a) FINDINGS- The Congress finds the following:

(1) The Oil Region of Northwestern Pennsylvania, with numerous sites and districts listed on the National Register of Historic Places, and designated by the Governor of Pennsylvania as one of the State Heritage Park Areas, is a region with tremendous physical and natural resources and possesses a story of State, national, and international significance.

(2) The single event of Colonel Edwin Drake's drilling of the world's first successful oil well in 1859 has affected the industrial, natural, social, and political structures of the modern world.

(3) Six national historic districts are located within the State Heritage Park boundary, in Emlenton, Franklin, Oil City, and Titusville, as well as 17 separate National Register sites.

(4) The Allegheny River, which was designated as a component of the national wild and scenic rivers system in 1992 by Public Law 102-271, traverses the Oil Region and connects

several of its major sites, as do some of the river's tributaries such as Oil Creek, French Creek, and Sandy Creek.

(5) The unspoiled rural character of the Oil Region provides many natural and recreational resources, scenic vistas, and excellent water quality for people throughout the United States to enjoy.

(6) Remnants of the oil industry, visible on the landscape to this day, provide a direct link to the past for visitors, as do the historic valley settlements, riverbed settlements, plateau developments, farmlands, and industrial landscapes.

(7) The Oil Region also represents a cross section of American history associated with Native Americans, frontier settlements, the French and Indian War, African Americans and the Underground Railroad, and immigration of Swedish and Polish individuals, among others.

(8) Involvement by the Federal Government shall serve to enhance the efforts of the Commonwealth of Pennsylvania, local subdivisions of the Commonwealth of Pennsylvania, volunteer organizations, and private businesses, to promote the cultural, national, and recreational resources of the region in order to fulfill their full potential.

(b) PURPOSE- The purpose of this title is to enhance a cooperative management framework to assist the Commonwealth of Pennsylvania, its units of local government, and area citizens in conserving, enhancing, and interpreting the significant features of the lands, water, and structures of the Oil Region, in a manner consistent with compatible economic development for the benefit and inspiration of present and future generations in the Commonwealth of Pennsylvania and the United States.

### **SEC. 703. OIL REGION NATIONAL HERITAGE AREA.**

(a) ESTABLISHMENT- There is hereby established the Oil Region National Heritage Area.

(b) BOUNDARIES- The boundaries of the Heritage Area shall include all of those lands depicted on a map entitled 'Oil Region National Heritage Area', numbered OIRE/20,000 and dated October, 2000. The map shall be on file in the appropriate offices of the National Park Service. The Secretary of the Interior shall publish in the Federal Register, as soon as practical after the date of the enactment of this Act, a detailed description and map of the boundaries established under this subsection.

(c) MANAGEMENT ENTITY- The management entity for the Heritage Area shall be the Oil Heritage Region, Inc., the locally based private, nonprofit management corporation which shall oversee the development of a management plan in accordance with section 705(b).

### **SEC. 704. COMPACT.**

To carry out the purposes of this title, the Secretary shall enter into a compact with the management entity. The compact shall include information relating to the objectives and management of the area, including a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the Secretary and management entity.



## SEC. ~~705~~ 5. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES OF THE MANAGEMENT ENTITY- The management entity may use funds made available under this title for purposes of preparing, updating, and implementing the management plan developed under subsection (b). Such purposes may include--

- (1) making grants to, and entering into cooperative agreements with, States and their political subdivisions, private organizations, or any other person;
- (2) hiring and compensating staff; and
- (3) undertaking initiatives that advance the purposes of the Heritage Area.

(b) MANAGEMENT PLAN- The management entity shall develop a management plan for the Heritage Area that--

- (1) presents comprehensive strategies and recommendations for conservation, funding, management, and development of the Heritage Area;
- (2) takes into consideration existing State, county, and local plans and involves residents, public agencies, and private organizations working in the Heritage Area;
- (3) includes a description of actions that units of government and private organizations have agreed to take to protect the resources of the Heritage Area;
- (4) specifies the existing and potential sources of funding to protect, manage, and develop the Heritage Area;
- (5) includes an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historic, recreational, or scenic significance;
- (6) describes a program for implementation of the management plan by the management entity, including plans for restoration and construction, and specific commitments for that implementation that have been made by the management entity and any other persons for the first 5 years of implementation;
- (7) lists any revisions to the boundaries of the Heritage Area proposed by the management entity and requested by the affected local government; and
- (8) includes an interpretation plan for the Heritage Area.

(c) DEADLINE; TERMINATION OF FUNDING-

- (1) DEADLINE- The management entity shall submit the management plan to the Secretary within 2 years after the funds are made available for this title.
- (2) TERMINATION OF FUNDING- If a management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for

Federal assistance under this title.

(d) DUTIES OF MANAGEMENT ENTITY- The management entity shall--

- (1) give priority to implementing actions set forth in the compact and management plan;
- (2) assist units of government, regional planning organizations, and nonprofit organizations in--
  - (A) establishing and maintaining interpretive exhibits in the Heritage Area;
  - (B) developing recreational resources in the Heritage Area;
  - (C) increasing public awareness of and appreciation for the natural, historical, and architectural resources and sites in the Heritage Area;
  - (D) the restoration of any historic building relating to the themes of the Heritage Area;
  - (E) ensuring that clear signs identifying access points and sites of interest are put in place throughout the Heritage Area; and
  - (F) carrying out other actions that the management entity determines to be advisable to fulfill the purposes of this title;
- (3) encourage by appropriate means economic viability in the Heritage Area consistent with the goals of the management plan;
- (4) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area; and
- (5) for any year in which Federal funds have been provided to implement the management plan under subsection (b)--
  - (A) conduct public meetings at least annually regarding the implementation of the management plan;
  - (B) submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each person to which any grant was made by the management entity in the year for which the report is made; and
  - (C) require, for all agreements entered into by the management entity authorizing expenditure of Federal funds by any other person, that the person making the expenditure make available to the management entity for audit all records pertaining to the expenditure of such funds.

(e) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY- The management entity may not use Federal funds received under this title to acquire real property or an interest in real property.

## SEC. 706. DUTIES AND AUTHORITIES OF THE SECRETARY.

### (a) TECHNICAL AND FINANCIAL ASSISTANCE-

#### (1) IN GENERAL-

(A) OVERALL ASSISTANCE- The Secretary may, upon the request of the management entity, and subject to the availability of appropriations, provide technical and financial assistance to the management entity to carry out its duties under this title, including updating and implementing a management plan that is submitted under section 705(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives.

(B) OTHER ASSISTANCE- If the Secretary has the resources available to provide technical assistance to the management entity to carry out its duties under this title (including updating and implementing a management plan that is submitted under section 705(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives), upon the request of the management entity the Secretary shall provide such assistance on a reimbursable basis. This subparagraph does not preclude the Secretary from providing nonreimbursable assistance under subparagraph (A).

(2) PRIORITY- In assisting the management entity, the Secretary shall give priority to actions that assist in the--

(A) implementation of the management plan;

(B) provision of educational assistance and advice regarding land and water management techniques to conserve the significant natural resources of the region ;

(C) development and application of techniques promoting the preservation of cultural and historic properties;

(D) preservation, restoration, and reuse of publicly and privately owned historic buildings;

(E) design and fabrication of a wide range of interpretive materials based on the management plan, including guide brochures, visitor displays, audio-visual and interactive exhibits, and educational curriculum materials for public education; and

(F) implementation of initiatives prior to approval of the management plan.

(3) DOCUMENTATION OF STRUCTURES- The Secretary, acting through the Historic American Building Survey and the Historic American Engineering Record, shall conduct studies necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLANS- The Secretary, in consultation with the Governor of Pennsylvania, shall approve or disapprove a management plan submitted under this title not later than 90 days after receiving such plan. In approving the plan,

the Secretary shall take into consideration the following criteria:

- (1) The extent to which the management plan adequately preserves and protects the natural, cultural, and historical resources of the Heritage Area.
  - (2) The level of public participation in the development of the management plan.
  - (3) The extent to which the board of directors of the management entity is representative of the local government and a wide range of interested organizations and citizens.
- (c) ACTION FOLLOWING DISAPPROVAL- If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions in the management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.
- (d) APPROVING CHANGES- The Secretary shall review and approve amendments to the management plan under section 705(b) that make substantial changes. Funds appropriated under this title may not be expended to implement such changes until the Secretary approves the amendments.
- (e) EFFECT OF INACTION- If the Secretary does not approve or disapprove a management plan, revision, or change within 90 days after it is submitted to the Secretary, then such management plan, revision, or change shall be deemed to have been approved by the Secretary.

## **SEC. ~~70~~7. DUTIES OF OTHER FEDERAL ENTITIES.**

Any Federal entity conducting or supporting activities directly affecting the Heritage Area shall--

- (1) consult with the Secretary and the management entity with respect to such activities;
- (2) cooperate with the Secretary and the management entity in carrying out their duties under this title and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and
- (3) to the maximum extent practicable, conduct or support such activities in a manner that the management entity determines shall not have an adverse effect on the Heritage Area.

## **SEC. ~~70~~8. SUNSET.**

The Secretary may not make any grant or provide any assistance under this title after the expiration of the 15-year period beginning on the date that funds are first made available for this title.

## **SEC. ~~70~~9. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.**

- (a) NOTIFICATION AND CONSENT OF PROPERTY OWNERS REQUIRED- No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has been notified in writing by the management entity and has given written consent for such preservation, conservation, or

promotion to the management entity.

(b) LANDOWNER WITHDRAW- Any owner of private property included within the boundary of the Heritage Area shall have their property immediately removed from the boundary by submitting a written request to the management entity.

## **SEC. 710. PRIVATE PROPERTY PROTECTION.**

(a) ACCESS TO PRIVATE PROPERTY- Nothing in this title shall be construed to--

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property; or

(2) modify any provision of Federal, State, or local law with regard to public access to or use of private property.

(b) LIABILITY- Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE- Nothing in this title shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS IN HERITAGE AREA- Nothing in this title shall be construed to require the owner of any private property located within the boundaries of the Heritage Area to participate in or be associated with the Heritage Area.

(e) EFFECT OF ESTABLISHMENT- The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this title may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexistent regulatory authority on land use within the Heritage Area or its viewshed by the Secretary, the National Park Service, or the management entity.

## **SEC. 711. USE OF FEDERAL FUNDS FROM OTHER SOURCES.**

Nothing in this title shall preclude the management entity from using Federal funds available under Acts other than this title for the purposes for which those funds were authorized.

## **SEC. 712. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL- There are authorized to be appropriated to carry out this title--

(1) not more than \$1,000,000 for any fiscal year; and

(2) not more than a total of \$10,000,000.

(b) 50 PERCENT MATCH- Financial assistance provided under this title may not be used to pay more than 50 percent of the total cost of any activity carried out with that assistance.

TITLE VII - MISSISSIPPI GULF COAST  
NATIONAL HERITAGE AREA ACT

## SEC. 1. SHORT TITLE

*title* This Act may be cited as the 'Mississippi Gulf Coast National Heritage Area Act'.

## SEC. 2. CONGRESSIONAL FINDINGS.

Congress finds that--

- (1) the 6-county area in southern Mississippi located on the Gulf of Mexico and in the Mississippi Coastal Plain has a unique identity that is shaped by--
  - (A) the coastal and riverine environment; and
  - (B) the diverse cultures that have settled in the area;
- (2) the area is rich with diverse cultural and historical significance, including--
  - (A) early Native American settlements; and
  - (B) Spanish, French, and English settlements originating in the 1600s;
- (3) the area includes spectacular natural, scenic, and recreational resources;
- (4) there is broad support from local governments and other interested individuals for the establishment of the Mississippi Gulf Coast National Heritage Area to coordinate and assist in the preservation and interpretation of those resources;
- (5) the Comprehensive Resource Management Plan, coordinated by the Mississippi Department of Marine Resources--
  - (A) is a collaborative effort of the Federal Government and State and local governments in the area; and
  - (B) is a natural foundation on which to establish the Heritage Area; and
- (6) establishment of the Heritage Area would assist local communities and residents in preserving the unique cultural, historical, and natural resources of the area.

## SEC. 3. DEFINITIONS.

In this Act:

- (1) HERITAGE AREA- The term 'Heritage Area' means the Mississippi Gulf Coast National Heritage Area established by section 4(a).
- (2) COORDINATING ENTITY- The term 'coordinating entity' means the coordinating entity for the Heritage Area designated by section 4(c).
- (3) MANAGEMENT PLAN- The term 'management plan' means the management plan for the Heritage Area developed under section 5.

(4) SECRETARY- The term 'Secretary' means the Secretary of the Interior.

(5) STATE- The term 'State' means the State of Mississippi.

#### **SEC. 4. MISSISSIPPI GULF COAST NATIONAL HERITAGE AREA.**

(a) ESTABLISHMENT- There is established in the State the Mississippi Gulf Coast National Heritage Area.

(b) BOUNDARIES- The Heritage Area shall consist of the counties of Pearl River, Stone, George, Hancock, Harrison, and Jackson in the State.

(c) COORDINATING ENTITY-

(1) IN GENERAL- The Mississippi Department of Marine Resources, in consultation with the Mississippi Department of Archives and History, shall serve as the coordinating entity for the Heritage Area.

(2) OVERSIGHT COMMITTEE- The coordinating entity shall ensure that each of the 6 counties included in the Heritage Area is appropriately represented on any oversight committee.

#### **SEC. 5. MANAGEMENT PLAN.**

(a) IN GENERAL- Not later than 3 years after the date of enactment of this Act, the coordinating entity shall develop and submit to the Secretary a management plan for the Heritage Area.

(b) REQUIREMENTS- The management plan shall--

(1) provide recommendations for the conservation, funding, management, interpretation, and development of the cultural, historical, archaeological, natural, and recreational resources of the Heritage Area;

(2) identify sources of funding for the Heritage Area;

(3) include--

(A) an inventory of the cultural, historical, archaeological, natural, and recreational resources of the Heritage Area; and

(B) an analysis of ways in which Federal, State, tribal, and local programs may best be coordinated to promote the purposes of this Act;

(4) provide recommendations for educational and interpretive programs to inform the public about the resources of the Heritage Area; and

(5) involve residents of affected communities and tribal and local governments.

(c) FAILURE TO SUBMIT- If a management plan is not submitted to the Secretary by the date

specified in subsection (a), the Secretary shall not provide any additional funding under this Act until a management plan for the Heritage Area is submitted to the Secretary.

**(d) APPROVAL OR DISAPPROVAL OF THE MANAGEMENT PLAN-**

(1) IN GENERAL- Not later than 90 days after receipt of the management plan under subsection

(a), the Secretary shall approve or disapprove the management plan.

(2) ACTION FOLLOWING DISAPPROVAL- If the Secretary disapproves a management plan under paragraph (1), the Secretary shall--

(A) advise the coordinating entity in writing of the reasons for disapproval;

(B) make recommendations for revision of the management plan; and

(C) allow the coordinating entity to submit to the Secretary revisions to the management plan.

(e) REVISION- After approval by the Secretary of the management plan, the coordinating entity shall periodically--

(1) review the management plan; and

(2) submit to the Secretary, for review and approval by the Secretary, any recommendations for revisions to the management plan.

**SEC. 6. AUTHORITIES AND DUTIES OF COORDINATING ENTITY.**

(a) AUTHORITIES- For purposes of developing and implementing the management plan and otherwise carrying out this Act, the coordinating entity may make grants to and provide technical assistance to tribal and local governments, and other public and private entities.

(b) DUTIES- In addition to developing the management plan under section 5, in carrying out this Act, the coordinating entity shall--

(1) implement the management plan; and

(2) assist local and tribal governments and non-profit organizations in--

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of, and appreciation for, the cultural, historical, archaeological, and natural resources of the Heritage Area;

(D) restoring historic structures that relate to the Heritage Area; and



(E) carrying out any other activity that the coordinating entity determines to be appropriate to carry out this Act, consistent with the management plan;

(3) conduct public meetings at least annually regarding the implementation of the management plan; and

(4) for any fiscal year for which Federal funds are made available under section 9--

(A) submit to the Secretary a report that describes, for the fiscal year, the actions of the coordinating entity in carrying out this Act;

(B) make available to the Secretary for audit all records relating to the expenditure of funds and any matching funds; and

(C) require, for all agreements authorizing the expenditure of Federal funds by any entity, that the receiving entity make available to the Secretary for audit all records relating to the expenditure of the funds.

(c) PROHIBITION ON ACQUISITION OF REAL PROPERTY- The coordinating entity shall not use Federal funds made available under this Act to acquire real property or any interest in real property.

## **SEC. 7. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.**

(a) IN GENERAL- On the request of the coordinating entity, the Secretary may provide technical and financial assistance to the coordinating entity for use in the development and implementation of the management plan.

(b) PROHIBITION OF CERTAIN REQUIREMENTS- The Secretary may not, as a condition of the provision of technical or financial assistance under this section, require any recipient of the assistance to impose or modify any land use restriction or zoning ordinance.

## **SEC. 8. EFFECT OF ACT.**

Nothing in this Act--

(1) affects or authorizes the coordinating entity to interfere with--

(A) the right of any person with respect to private property; or

(B) any local zoning ordinance or land use plan;

(2) restricts an Indian tribe from protecting cultural or religious sites on tribal land;

(3) modifies, enlarges, or diminishes the authority of any State, tribal, or local government to regulate any use of land under any other law (including regulations);

(4)(A) modifies, enlarges, or diminishes the authority of the State to manage fish and

wildlife in the Heritage Area, including the regulation of fishing and hunting; or

(B) authorizes the coordinating entity to assume any management authorities over such lands; or

(5) diminishes the trust responsibilities or government-to-government obligations of the United States to any federally recognized Indian tribe.

## SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL- There is authorized to be appropriated to carry out this Act \$10,000,000, of which not more than \$1,000,000 may be made available for any fiscal year.

(b) COST-SHARING REQUIREMENT- The Federal share of the total cost of any activity assisted under this Act shall be not more than 50 percent.

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VIII  
 TITLE -- FEDERAL LANDS RECREATION  
 ENHANCEMENT ACT  
**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

**TO H.R. 3283, AS REPORTED**

**OFFERED BY MR. POMBO OF CALIFORNIA**

~~Strike all after the enacting clause and insert the~~  
 following:

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This <sup>title</sup> Act may be cited as the  
 3 “Federal Lands Recreation Enhancement Act”.

4 (b) TABLE OF CONTENTS.—The table of contents of  
 5 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Definitions.
- Sec. 3. Recreation fee authority.
- Sec. 4. Public participation.
- Sec. 5. Recreation passes.
- Sec. 6. Cooperative agreements.
- Sec. 7. Special account and distribution of fees and revenues.
- Sec. 8. Expenditures.
- Sec. 9. Reports.
- Sec. 10. Sunset provision.
- Sec. 11. Volunteers.
- Sec. 12. Enforcement and protection of receipts.
- Sec. 13. Repeal of superseded admission and use fee authorities.
- Sec. 14. Relation to other laws and fee collection authorities.

1  
 6 **SEC. 2. DEFINITIONS.** *Sec. 15. Limitation on use of fees for employee bonuses.*

7 In this Act:

8 (1) STANDARD AMENITY RECREATION FEE.—

9 The term “standard amenity recreation fee” means  
 10 the recreation fee authorized by section 3(f).



1 (2) EXPANDED AMENITY RECREATION FEE.—

2 The term “expanded amenity recreation fee” means  
3 the recreation fee authorized by section 3(g).

4 (3) ENTRANCE FEE.—The term “entrance fee”  
5 means the recreation fee authorized to be charged to  
6 enter onto lands managed by the National Park  
7 Service or the United States Fish and Wildlife Serv-  
8 ice.

9 (4) FEDERAL LAND MANAGEMENT AGENCY.—  
10 The term “Federal land management agency”  
11 means the National Park Service, the United States  
12 Fish and Wildlife Service, the Bureau of Land Man-  
13 agement, the Bureau of Reclamation, or the Forest  
14 Service.

15 (5) FEDERAL RECREATIONAL LANDS AND WA-  
16 TERS.—The term “Federal recreational lands and  
17 waters” means lands or waters managed by a Fed-  
18 eral land management agency.

19 (6) NATIONAL PARKS AND FEDERAL REC-  
20 REATIONAL LANDS PASS.—The term “National  
21 Parks and Federal Recreational Lands Pass” means  
22 the interagency national pass authorized by section  
23 5.

24 (7) PASSHOLDER.—The term “passholder”  
25 means the person who is issued a recreation pass.



1 (8) RECREATION FEE.—The term “recreation  
2 fee” means an entrance fee, standard amenity recre-  
3 ation fee, expanded amenity recreation fee, or special  
4 recreation permit fee.

5 (9) RECREATION PASS.—The term “recreation  
6 pass” means the National Parks and Federal Rec-  
7 reational Lands Pass or one of the other recreation  
8 passes available as authorized by section 5.

9 (10) SECRETARY.—The term “Secretary”  
10 means—

11 (A) the Secretary of the Interior, with re-  
12 spect to a Federal land management agency  
13 (other than the Forest Service); and

14 (B) the Secretary of Agriculture, with re-  
15 spect to the Forest Service.

16 (11) SECRETARIES.—The term “Secretaries”  
17 means the Secretary of the Interior and the Sec-  
18 retary of Agriculture acting jointly.

19 (12) SPECIAL ACCOUNT.—The term “special ac-  
20 count” means the special account established in the  
21 Treasury under section 7 for a Federal land man-  
22 agement agency.

23 (13) SPECIAL RECREATION PERMIT FEE.—The  
24 term “special recreation permit fee” means the fee  
25 authorized by section 3(h).



1 **SEC. 3. RECREATION FEE AUTHORITY.**

2 (a) **AUTHORITY OF SECRETARY.**—Beginning in fiscal  
3 year 2005 and thereafter, the Secretary may establish,  
4 modify, charge, and collect recreation fees at Federal rec-  
5 reational lands and waters as provided for in this section.

6 (b) **BASIS FOR RECREATION FEES.**—Recreation fees  
7 shall be established in a manner consistent with the fol-  
8 lowing criteria:

9 (1) The amount of the recreation fee shall be  
10 commensurate with the benefits and services pro-  
11 vided to the visitor.

12 (2) The Secretary shall consider the aggregate  
13 effect of recreation fees on recreation users and  
14 recreation service providers.

15 (3) The Secretary shall consider comparable  
16 fees charged elsewhere and by other public agencies  
17 and by nearby private sector operators.

18 (4) The Secretary shall consider the public pol-  
19 icy or management objectives served by the recre-  
20 ation fee.

21 (5) The Secretary shall obtain input from the  
22 appropriate Recreation Resource Advisory Com-  
23 mittee, as provided in section 4(d).

24 (6) The Secretary shall consider such other fac-  
25 tors or criteria as determined appropriate by the  
26 Secretary.

1 (c) SPECIAL CONSIDERATIONS.—The Secretary shall  
2 establish the minimum number of recreation fees and shall  
3 avoid the collection of multiple or layered recreation fees  
4 for similar uses, activities, or programs.

5 (d) LIMITATIONS ON RECREATION FEES.—

6 (1) PROHIBITION ON FEES FOR CERTAIN AC-  
7 TIVITIES OR SERVICES.—The Secretary shall not  
8 charge any standard amenity recreation fee or ex-  
9 panded amenity recreation fee for Federal rec-  
10 reational lands and waters administered by the Bu-  
11 reau of Land Management, the Forest Service, or  
12 the Bureau of Reclamation under this Act for any  
13 of the following:

14 (A) Solely for parking, undesignated park-  
15 ing, or picnicking along roads or trailsides.

16 (B) For general access unless specifically  
17 authorized under this section.

18 (C) For dispersed areas with low or no in-  
19 vestment unless specifically authorized under  
20 this section.

21 (D) For persons who are driving through,  
22 walking through, boating through, horseback  
23 riding through, or hiking through Federal rec-  
24 reational lands and waters without using the fa-  
25 cilities and services.



1 (E) For camping at undeveloped sites that  
2 do not provide a minimum number of facilities  
3 and services as described in subsection  
4 (g)(2)(A).

5 (F) For use of overlooks or scenic pullouts.

6 (G) For travel by private, noncommercial  
7 vehicle over any national parkway or any road  
8 or highway established as a part of the Federal-  
9 aid System, as defined in section 101 of title  
10 23, United States Code, which is commonly  
11 used by the public as a means of travel between  
12 two places either or both of which are outside  
13 any unit or area at which recreation fees are  
14 charged under this Act.

15 (H) For travel by private, noncommercial  
16 vehicle, boat, or aircraft over any road or high-  
17 way, waterway, or airway to any land in which  
18 such person has any property right if such land  
19 is within any unit or area at which recreation  
20 fees are charged under this Act.

21 (I) For any person who has a right of ac-  
22 cess for hunting or fishing privileges under a  
23 specific provision of law or treaty.





1 (J) For any person who is engaged in the  
2 conduct of official Federal, State, Tribal, or  
3 local government business.

4 (K) For special attention or extra services  
5 necessary to meet the needs of the disabled.

6 (2) RELATION TO FEES FOR USE OF HIGHWAYS  
7 OR ROADS.—An entity that pays a special recreation  
8 permit fee or similar permit fee shall not be subject  
9 to a road cost-sharing fee or a fee for the use of  
10 highways or roads that are open to private, non-  
11 commercial use within the boundaries of any Federal  
12 recreational lands or waters, as authorized under  
13 section 6 of Public Law 88–657 (16 U.S.C. 537;  
14 commonly known as the Forest Roads and Trails  
15 Act).

16 (3) PROHIBITION ON FEES FOR CERTAIN PER-  
17 SONS OR PLACES.—The Secretary shall not charge  
18 an entrance fee or standard amenity recreation fee  
19 for the following:

20 (A) Any person under 16 years of age.

21 (B) Outings conducted for noncommercial  
22 educational purposes by schools or bona fide  
23 academic institutions.

24 (C) The U.S.S. Arizona Memorial, Inde-  
25 pendence National Historical Park, any unit of



1 the National Park System within the District of  
2 Columbia, or Arlington House-Robert E. Lee  
3 National Memorial.

4 (D) The Flight 93 National Memorial.

5 (E) Entrance on other routes into the  
6 Great Smoky Mountains National Park or any  
7 part thereof unless fees are charged for en-  
8 trance into that park on main highways and  
9 thoroughfares.

10 (F) Entrance on units of the National  
11 Park System containing deed restrictions on  
12 charging fees.

13 (G) An area or unit covered under section  
14 203 of the Alaska National Interest Lands Con-  
15 servation Act (Public Law 96-487; 16 U.S.C.  
16 410hh-2), with the exception of Denali Na-  
17 tional Park and Preserve.

18 (H) A unit of the National Wildlife Refuge  
19 System created, expanded, or modified by the  
20 Alaska National Interest Lands Conservation  
21 Act (Public Law 96-487).

22 (I) Any person who visits a unit or area  
23 under the jurisdiction of the United States Fish  
24 and Wildlife Service and who has been issued a  
25 valid migratory bird hunting and conservation



1 stamp issued under section 2 of the Act of  
2 March 16, 1934 (16 U.S.C. 718b; commonly  
3 known as the Duck Stamp Act).

4 (J) Any person engaged in a nonrec-  
5 reational activity authorized under a valid per-  
6 mit issued under any other Act, including a  
7 valid grazing permit.

8 (4) NO RESTRICTION ON RECREATION OPPOR-  
9 TUNITIES.—Nothing in this Act shall limit the use  
10 of recreation opportunities only to areas designated  
11 for collection of recreation fees.

12 (e) ENTRANCE FEE.—

13 (1) AUTHORIZED SITES FOR ENTRANCE  
14 FEES.—The Secretary of the Interior may charge an  
15 entrance fee for a unit of the National Park System,  
16 including a national monument administered by the  
17 National Park Service, or for a unit of the National  
18 Wildlife Refuge System.

19 (2) PROHIBITED SITES.—The Secretary shall  
20 not charge an entrance fee for Federal recreational  
21 lands and waters managed by the Bureau of Land  
22 Management, the Bureau of Reclamation, or the  
23 Forest Service.

24 (f) STANDARD AMENITY RECREATION FEE.—Except  
25 as limited by subsection (d), the Secretary may charge a



1 standard amenity recreation fee for Federal recreational  
2 lands and waters under the jurisdiction of the Bureau of  
3 Land Management, the Bureau of Reclamation, or the  
4 Forest Service, but only at the following:

5 (1) A National Conservation Area.

6 (2) A National Volcanic Monument.

7 (3) A destination visitor or interpretive center  
8 that provides a broad range of interpretive services,  
9 programs, and media.

10 (4) An area—

11 (A) that provides significant opportunities  
12 for outdoor recreation;

13 (B) that has substantial Federal invest-  
14 ments;

15 (C) where fees can be efficiently collected;  
16 and

17 (D) that contains all of the following  
18 amenities:

19 (i) Designated developed parking.

20 (ii) A permanent toilet facility.

21 (iii) A permanent trash receptacle.

22 (iv) Interpretive sign, exhibit, or  
23 kiosk.

24 (v) Picnic tables.

25 (vi) Security services.



1 (g) EXPANDED AMENITY RECREATION FEE.—

2 (1) NPS AND USFWS AUTHORITY.—Except as  
3 limited by subsection (d), the Secretary of the Inte-  
4 rior may charge an expanded amenity recreation fee,  
5 either in addition to an entrance fee or by itself, at  
6 Federal recreational lands and waters under the ju-  
7 risdiction of the National Park Service or the United  
8 States Fish and Wildlife Service when the Secretary  
9 of the Interior determines that the visitor uses a  
10 specific or specialized facility, equipment, or service.

11 (2) OTHER FEDERAL LAND MANAGEMENT  
12 AGENCIES.—Except as limited by subsection (d), the  
13 Secretary may charge an expanded amenity recre-  
14 ation fee, either in addition to a standard amenity  
15 fee or by itself, at Federal recreational lands and  
16 waters under the jurisdiction of the Forest Service,  
17 the Bureau of Land Management, or the Bureau of  
18 Reclamation, but only for the following facilities or  
19 services:

20 (A) Use of developed campgrounds that  
21 provide at least a majority of the following:

- 22 (i) Tent or trailer spaces.  
23 (ii) Picnic tables.  
24 (iii) Drinking water.  
25 (iv) Access roads.



1 (v) The collection of the fee by an em-  
2 ployee or agent of the Federal land man-  
3 agement agency.

4 (vi) Reasonable visitor protection.

5 (vii) Refuse containers.

6 (viii) Toilet facilities.

7 (ix) Simple devices for containing a  
8 campfire.

9 (B) Use of highly developed boat launches  
10 with specialized facilities or services such as  
11 mechanical or hydraulic boat lifts or facilities,  
12 multi-lane paved ramps, paved parking, rest-  
13 rooms and other improvements such as board-  
14 ing floats, loading ramps, or fish cleaning sta-  
15 tions.

16 (C) Rental of cabins, boats, stock animals,  
17 lookouts, historic structures, group day-use or  
18 overnight sites, audio tour devices, portable  
19 sanitation devices, binoculars or other equip-  
20 ment.

21 (D) Use of hookups for electricity, cable,  
22 or sewer.

23 (E) Use of sanitary dump stations.

24 (F) Participation in an enhanced interpre-  
25 tive program or special tour.



1 (G) Use of reservation services.

2 (H) Use of transportation services.

3 (I) Use of areas where emergency medical  
4 or first-aid services are administered from fa-  
5 cilities staffed by public employees or employees  
6 under a contract or reciprocal agreement with  
7 the Federal Government.

8 (J) Use of developed swimming sites that  
9 provide at least a majority of the following:

10 (i) Bathhouse with showers and flush  
11 toilets.

12 (ii) Refuse containers.

13 (iii) Picnic areas.

14 (iv) Paved parking.

15 (v) Attendants, including lifeguards.

16 (vi) Floats encompassing the swim-  
17 ming area.

18 (vii) Swimming deck.

19 (h) SPECIAL RECREATION PERMIT FEE.—The Sec-  
20 retary may issue a special recreation permit, and charge  
21 a special recreation permit fee in connection with the  
22 issuance of the permit, for specialized recreation uses of  
23 Federal recreational lands and waters, such as group ac-  
24 tivities, recreation events, motorized recreational vehicle  
25 use.



1 **SEC. 4. PUBLIC PARTICIPATION.**

2 (a) IN GENERAL.—As required in this section, the  
3 Secretary shall provide the public with opportunities to  
4 participate in the development of or changing of a recre-  
5 ation fee established under this Act.

6 (b) ADVANCE NOTICE.—The Secretary shall publish  
7 a notice in the Federal Register of the establishment of  
8 a new recreation fee area for each agency 6 months before  
9 establishment. The Secretary shall publish notice of a new  
10 recreation fee or a change to an existing recreation fee  
11 established under this Act in local newspapers and publi-  
12 cations located near the site at which the recreation fee  
13 would be established or changed.

14 (c) PUBLIC INVOLVEMENT.—Before establishing any  
15 new recreation fee area, the Secretary shall provide oppor-  
16 tunity for public involvement by—

17 (1) establishing guidelines for public involve-  
18 ment;

19 (2) establishing guidelines on how agencies will  
20 demonstrate on an annual basis how they have pro-  
21 vided information to the public on the use of recre-  
22 ation fee revenues; and

23 (3) publishing the guidelines in paragraphs (1)  
24 and (2) in the Federal Register.

25 (d) RECREATION RESOURCE ADVISORY COM-  
26 MITTEE.—



1 (1) ESTABLISHMENT.—

2 (A) AUTHORITY TO ESTABLISH.—Except  
3 as provided in subparagraphs (C) and (D), the  
4 Secretary or the Secretaries shall establish a  
5 Recreation Resource Advisory Committee in  
6 each State or region for Federal recreational  
7 lands and waters managed by the Forest Serv-  
8 ice or the Bureau of Land Management to per-  
9 form the duties described in paragraph (2).

10 (B) NUMBER OF COMMITTEES.—The Sec-  
11 retary may have as many additional Recreation  
12 Resource Advisory Committees in a State or re-  
13 gion as the Secretary considers necessary for  
14 the effective operation of this Act.

15 (C) EXCEPTION.—The Secretary shall not  
16 establish a Recreation Resource Advisory Com-  
17 mittee in a State if the Secretary determines, in  
18 consultation with the Governor of the State,  
19 that sufficient interest does not exist to ensure  
20 that participation on the Committee is balanced  
21 in terms of the points of view represented and  
22 the functions to be performed.

23 (D) USE OF OTHER ENTITIES.—In lieu of  
24 establishing a Recreation Resource Advisory  
25 Committee under subparagraph (A), the Sec-



1           retary may use a Resource Advisory Committee  
2           established pursuant to another provision of law  
3           and in accordance with that law or a recreation  
4           fee advisory board otherwise established by the  
5           Secretary to perform the duties specified in  
6           paragraph (2).

7           (2) DUTIES.—In accordance with the proce-  
8           dures required by paragraph (9), a Recreation Re-  
9           source Advisory Committee may make recommenda-  
10          tions to the Secretary regarding a standard amenity  
11          recreation fee or an expanded amenity recreation  
12          fee, whenever the recommendations relate to public  
13          concerns in the State or region covered by the Com-  
14          mittee regarding—

15                (A) the implementation of a standard  
16                amenity recreation fee or an expanded amenity  
17                recreation fee or the establishment of a specific  
18                recreation fee site;

19                (B) the elimination of a standard amenity  
20                recreation fee or an expanded amenity recre-  
21                ation fee; or

22                (C) the expansion or limitation of the  
23                recreation fee program.

24           (3) MEETINGS.—A Recreation Resource Advi-  
25          sory Committee shall meet at least annually, but



1       may, at the discretion of the Secretary, meet as  
2       often as needed to deal with citizen concerns about  
3       the recreation fee program in a timely manner.

4           (4) NOTICE OF REJECTION.—If the Secretary  
5       rejects the recommendation of a Recreation Re-  
6       source Advisory Committee, the Secretary shall issue  
7       a notice that identifies the reasons for rejecting the  
8       recommendation to the Committee on Resources of  
9       the House of Representatives and the Committee on  
10      Energy and Natural Resources of the Senate not  
11      later than 30 days before the Secretary implements  
12      a decision pertaining to that recommendation.

13          (5) COMPOSITION OF THE ADVISORY COM-  
14      MITTEE.—

15           (A) NUMBER.—A Recreation Resource Ad-  
16      visory Committee shall be comprised of 11  
17      members.

18           (B) NOMINATIONS.—The Governor and  
19      the designated county official from each county  
20      in the relevant State or Region may submit a  
21      list of nominations in the categories described  
22      under subparagraph (D).

23           (C) APPOINTMENT.—The Secretary may  
24      appoint members of the Recreation Resource



1       Advisory Committee from the list as provided in  
2       subparagraph (B).

3               (D) BROAD AND BALANCED REPRESENTA-  
4       TION.—In appointing the members of a Recre-  
5       ation Resource Advisory Committee, the Sec-  
6       retary shall provide for a balanced and broad  
7       representation from the recreation community  
8       that shall include the following:

9               (i) Five persons who represent recre-  
10       ation users and that include, as appro-  
11       priate, persons representing the following:

12               (I) Winter motorized recreation,  
13       such as snowmobiling.

14               (II) Winter non-motorized recre-  
15       ation, such as snowshoeing, cross  
16       country and down hill skiing, and  
17       snowboarding.

18               (III) Summer motorized recre-  
19       ation, such as motorcycles, boaters,  
20       and off-highway vehicles.

21               (IV) Summer nonmotorized  
22       recreation, such as backpacking,  
23       horseback riding, mountain biking, ca-  
24       noeing, and rafting.

25               (V) Hunting and fishing.



1 (ii) Three persons who represent in-  
2 terest groups that include, as appropriate,  
3 the following:

4 (I) Motorized outfitters and  
5 guides.

6 (II) Non-motorized outfitters and  
7 guides.

8 (III) Local environmental groups.

9 (iii) Three persons, as follows:

10 (I) State tourism official to rep-  
11 resent the State.

12 (II) A person who represents af-  
13 fected Indian tribes.

14 (III) A person who represents af-  
15 fected local government interests.

16 (6) TERM.—

17 (A) LENGTH OF TERM.—The Secretary  
18 shall appoint the members of a Recreation Re-  
19 source Advisory Committee for staggered terms  
20 of two and three years beginning on the date of  
21 the members are first appointed. The Secretary  
22 may reappoint members to subsequent two- or  
23 three-year terms.

24 (B) EFFECT OF VACANCY.—The Secretary  
25 shall make appointments to fill a vacancy on a



1 Recreation Resource Advisory Committee as  
2 soon as practicable after the vacancy has oc-  
3 curred.

4 (C) EFFECT OF UNEXPECTED VACANCY.—

5 Where an unexpected vacancy occurs, the Gov-  
6 ernor and the designated county officials from  
7 each county in the relevant state shall provide  
8 the Secretary with a list of nominations in the  
9 relevant category, as described under paragraph  
10 (5)(D), not later than two months after notifi-  
11 cation of the vacancy. To the extent possible, a  
12 vacancy shall be filled in the same category and  
13 term in which the original appointment was  
14 made.

15 (7) CHAIRPERSON.—The chairperson of a  
16 Recreation Resource Advisory Committee shall be  
17 selected by the majority vote of the members of the  
18 Committee.

19 (8) QUORUM.—Eight members shall constitute  
20 a quorum. A quorum must be present to constitute  
21 an official meeting of a Recreation Resource Advi-  
22 sory Committee.

23 (9) APPROVAL PROCEDURES.—A Recreation  
24 Resource Advisory Committee shall establish proce-  
25 dures for making recommendations to the Secretary.



1 A recommendation may be submitted to the Sec-  
2 retary only if the recommendation is approved by a  
3 majority of the members of the Committee from  
4 each of the categories specified in paragraph (5)(D)  
5 and general public support for the recommendation  
6 is documented.

7 (10) COMPENSATION.—Members of the Recre-  
8 ation Resource Advisory Committee shall not receive  
9 any compensation.

10 (11) PUBLIC PARTICIPATION IN THE RECRE-  
11 ATION RESOURCE ADVISORY COMMITTEE.—

12 (A) NOTICE OF MEETINGS.—All meetings  
13 of a Recreation Resource Advisory Committee  
14 shall be announced at least one week in advance  
15 in a local newspaper of record and the Federal  
16 Register, and shall be open to the public.

17 (B) RECORDS.—A Recreation Resource  
18 Advisory Committee shall maintain records of  
19 the meetings of the Recreation Resource Advi-  
20 sory Committee and make the records available  
21 for public inspection.

22 (12) FEDERAL ADVISORY COMMITTEE ACT.—A  
23 Recreation Resource Advisory Committee is subject  
24 to the provisions of the Federal Advisory Committee  
25 Act (5 U.S.C. App.).



1 (e) MISCELLANEOUS ADMINISTRATIVE PROVISIONS  
2 REGARDING RECREATION FEES AND RECREATION  
3 PASSES.—

4 (1) NOTICE OF ENTRANCE FEES, STANDARD  
5 AMENITY RECREATION FEES, AND PASSES.—The  
6 Secretary shall post clear notice of any entrance fee,  
7 standard amenity recreation fee, and available recre-  
8 ation passes at appropriate locations in each unit or  
9 area of a Federal land management agency where an  
10 entrance fee or a standard amenity recreation fee is  
11 charged. The Secretary shall include such notice in  
12 publications distributed at the unit or area.

13 (2) NOTICE OF RECREATION FEE PROJECTS.—  
14 To the extent practicable, the Secretary shall post  
15 clear notice of locations where work is performed  
16 using recreation fee or recreation pass revenues col-  
17 lected under this Act.

18 **SEC. 5. RECREATION PASSES.**

19 (a) AMERICA THE BEAUTIFUL—THE NATIONAL  
20 PARKS AND FEDERAL RECREATIONAL LANDS PASS.—

21 (1) AVAILABILITY AND USE.—The Secretaries  
22 shall establish, and may charge a fee for, an inter-  
23 agency national pass to be known as the “America  
24 the Beautiful—the National Parks and Federal Rec-  
25 reational Lands Pass”, which shall cover the en-





1       trance fee and standard amenity recreation fee for  
2       all Federal recreational lands and waters for which  
3       an entrance fee or a standard amenity recreation fee  
4       is charged.

5           (2) IMAGE COMPETITION FOR RECREATION  
6       PASS.—The Secretaries shall hold an annual com-  
7       petition to select the image to be used on the Na-  
8       tional Parks and Federal Recreational Lands Pass  
9       for a year. The competition shall be open to the pub-  
10      lic and used as a means to educate the American  
11      people about Federal recreational lands and waters.

12          (3) NOTICE OF ESTABLISHMENT.—The Secre-  
13      taries shall publish a notice in the Federal Register  
14      when the National Parks and Federal Recreational  
15      Lands Pass is first established and available for pur-  
16      chase.

17          (4) DURATION.—The National Parks and Fed-  
18      eral Recreational Lands Pass shall be valid for a pe-  
19      riod of 12 months from the date of the issuance of  
20      the recreation pass to a passholder, except in the  
21      case of the age and disability discounted passes  
22      issued under subsection (b).

23          (5) PRICE.—The Secretaries shall establish the  
24      price at which the National Parks and Federal Rec-  
25      reational Lands Pass will be sold to the public.



1 (6) SALES LOCATIONS AND MARKETING.—

2 (A) IN GENERAL.—The Secretary shall sell  
3 the National Parks and Federal Recreational  
4 Lands Pass at all Federal recreational lands  
5 and waters at which an entrance fee or a stand-  
6 ard amenity recreation fee is charged and at  
7 such other locations as the Secretaries consider  
8 appropriate and feasible.

9 (B) USE OF VENDORS.—The Secretary  
10 may enter into fee management agreements as  
11 provided in section 6.

12 (C) MARKETING.—The Secretaries shall  
13 take such actions as are appropriate to provide  
14 for the active marketing of the National Parks  
15 and Federal Recreational Lands Pass.

16 (7) ADMINISTRATIVE GUIDELINES.—The Secre-  
17 taries shall issue guidelines on administration of the  
18 National Parks and Federal Recreational Lands  
19 Pass, which shall include agreement on price, the  
20 distribution of revenues between the Federal land  
21 management agencies, the sharing of costs, benefits  
22 provided, marketing and design, adequate docu-  
23 mentation for age and disability discounts under  
24 subsection (b), and the issuance of that recreation  
25 pass to volunteers. The Secretaries shall take into



1 consideration all relevant visitor and sales data  
2 available in establishing the guidelines.

3 (8) DEVELOPMENT AND IMPLEMENTATION  
4 AGREEMENTS.—The Secretaries may enter into co-  
5 operative agreements with governmental and non-  
6 governmental entities for the development and im-  
7 plementation of the National Parks and Federal  
8 Recreational Lands Pass Program.

9 (9) PROHIBITION ON OTHER NATIONAL RECRE-  
10 ATION PASSES.—The Secretary may not establish  
11 any national recreation pass, except as provided in  
12 this section.

13 (b) DISCOUNTED PASSES.—

14 (1) AGE DISCOUNT.—The Secretary shall make  
15 the National Parks and Federal Recreational Lands  
16 Pass available, at a cost of \$10.00, to any United  
17 States citizen or person domiciled in the United  
18 States who is 62 years of age or older, if the citizen  
19 or person provides adequate proof of such age and  
20 such citizenship or residency. The National Parks  
21 and Federal Recreational Lands Pass made available  
22 under this subsection shall be valid for the lifetime  
23 of the pass holder.

24 (2) DISABILITY DISCOUNT.—The Secretary  
25 shall make the National Parks and Federal Rec-



1       reational Lands Pass available, without charge, to  
2       any United States citizen or person domiciled in the  
3       United States who has been medically determined to  
4       be permanently disabled for purposes of section  
5       7(20)(B)(i) of the Rehabilitation Act of 1973 (29  
6       U.S.C. 705(20)(B)(i)), if the citizen or person pro-  
7       vides adequate proof of the disability and such citi-  
8       zenship or residency. The National Parks and Fed-  
9       eral Recreational Lands Pass made available under  
10      this subsection shall be valid for the lifetime of the  
11      passholder.

12      (c) SITE-SPECIFIC AGENCY PASSES.—The Secretary  
13      may establish and charge a fee for a site-specific pass that  
14      will cover the entrance fee or standard amenity recreation  
15      fee for particular Federal recreational lands and waters  
16      for a specified period not to exceed 12 months.

17      (d) REGIONAL MULTIENTITY PASSES.—

18           (1) PASSES AUTHORIZED.—The Secretary may  
19      establish and charge a fee for a regional multientity  
20      pass that will be accepted by one or more Federal  
21      land management agencies or by one or more gov-  
22      ernmental or nongovernmental entities for a speci-  
23      fied period not to exceed 12 months. To include a  
24      Federal land management agency or governmental  
25      or nongovernmental entity over which the Secretary



1 does not have jurisdiction, the Secretary shall obtain  
2 the consent of the head of such agency or entity.

3 (2) REGIONAL MULTIENTITY PASS AGREE-  
4 MENT.—In order to establish a regional multientity  
5 pass under this subsection, the Secretary shall enter  
6 into a regional multientity pass agreement with all  
7 the participating agencies or entities on price, the  
8 distribution of revenues between participating agen-  
9 cies or entities, the sharing of costs, benefits pro-  
10 vided, marketing and design, and the issuance of the  
11 pass to volunteers. The Secretary shall take into  
12 consideration all relevant visitor and sales data  
13 available when entering into this agreement.

14 (e) DISCOUNTED OR FREE ADMISSION DAYS OR  
15 USE.—The Secretary may provide for a discounted or free  
16 admission day or use of Federal recreational lands and  
17 waters.

18 (f) EFFECT ON EXISTING PASSPORTS AND PER-  
19 MITS.—

20 (1) EXISTING PASSPORTS.—A passport issued  
21 under section 4 of the Land and Water Conservation  
22 Fund Act of 1965 (16 U.S.C. 460l–6a) or title VI  
23 of the National Parks Omnibus Management Act of  
24 1998 (Public Law 105–391; 16 U.S.C. 5991–5995),  
25 such as the Golden Eagle Passport, the Golden Age



1 Passport, the Golden Access Passport, and the Na-  
2 tional Parks Passport, that was valid on the day be-  
3 fore the publication of the Federal Register notice  
4 required under subsection (a)(3) shall be valid in ac-  
5 cordance with the terms agreed to at the time of  
6 issuance of the passport, to the extent practicable,  
7 and remain in effect until expired, lost, or stolen.

8 (2) PERMITS.—A permit issued under section 4  
9 of the Land and Water Conservation Fund Act of  
10 1965 that was valid on the day before the date of  
11 the enactment of this Act shall be valid and remain  
12 in effect until expired, revoked, or suspended.

13 **SEC. 6. COOPERATIVE AGREEMENTS.**

14 (a) FEE MANAGEMENT AGREEMENT.—Notwith-  
15 standing chapter 63 of title 31, United States Code, the  
16 Secretary may enter into a fee management agreement,  
17 including a contract, which may provide for a reasonable  
18 commission, reimbursement, or discount, with the fol-  
19 lowing entities for the following purposes:

20 (1) With any governmental or nongovernmental  
21 entity, including those in a gateway community, for  
22 the purpose of obtaining fee collection and proc-  
23 essing services, including visitor reservation services.



1           (2) With any governmental or nongovernmental  
2       entity, including those in a gateway community, for  
3       the purpose of obtaining emergency medical services.

4           (3) With any governmental entity, including  
5       those in a gateway community, to obtain law en-  
6       forcement services.

7       (b) REVENUE SHARING.—A State or legal subdivi-  
8       sion of a State that enters into an agreement with the  
9       Secretary under subsection (a) may share in a percentage  
10      of the revenues collected at the site in accordance with  
11      that fee management agreement.

12      (c) COUNTY PROPOSALS.—The Secretary shall con-  
13      sider any proposal submitted by a county to provide serv-  
14      ices described in subsection (a). If the Secretary decides  
15      not to enter into a fee management agreement with the  
16      county under subsection (a), the Secretary shall notify the  
17      county in writing of the decision, identifying the reasons  
18      for the decision. The fee management agreement may in-  
19      clude cooperative site planning and management provi-  
20      sions.

21      **SEC. 7. SPECIAL ACCOUNT AND DISTRIBUTION OF FEES**  
22                                      **AND REVENUES.**

23      (a) SPECIAL ACCOUNT.—The Secretary of the Treas-  
24      ury shall establish a special account in the Treasury for  
25      each Federal land management agency.



1 (b) DEPOSITS.—Subject to subsections (c), (d), and  
2 (e), revenues collected by each Federal land management  
3 agency under this Act shall—

4 (1) be deposited in its special account; and

5 (2) remain available for expenditure, without  
6 further appropriation, until expended.

7 (c) DISTRIBUTION OF RECREATION FEES AND SIN-  
8 GLE-SITE AGENCY PASS REVENUES.—

9 (1) LOCAL DISTRIBUTION OF FUNDS.—

10 (A) RETENTION OF REVENUES.—Not less  
11 than 80 percent of the recreation fees and site-  
12 specific agency pass revenues collected at a spe-  
13 cific unit or area of a Federal land management  
14 agency shall remain available for expenditure,  
15 without further appropriation, until expended at  
16 that unit or area.

17 (B) REDUCTION.—The Secretary may re-  
18 duce the percentage allocation otherwise appli-  
19 cable under subparagraph (A) to a unit or area  
20 of a Federal land management agency, but not  
21 below 60 percent, for a fiscal year if the Sec-  
22 retary determines that the revenues collected at  
23 the unit or area exceed the reasonable needs of  
24 the unit or area for which expenditures may be  
25 made for that fiscal year.





1           (2) AGENCY-WIDE DISTRIBUTION OF FUNDS.—

2       The balance of the recreation fees and site-specific  
3       agency pass revenues collected at a specific unit or  
4       area of a Federal land management and not distrib-  
5       uted in accordance with paragraph (1) shall remain  
6       available to that Federal land management agency  
7       for expenditure on an agency-wide basis, without  
8       further appropriation, until expended.

9           (3) OTHER AMOUNTS.—Other amounts col-  
10      lected at other locations, including recreation fees  
11      collected by other entities or for a reservation serv-  
12      ice, shall remain available, without further appro-  
13      priation, until expended in accordance with guide-  
14      lines established by the Secretary.

15      (d) DISTRIBUTION OF NATIONAL PARKS AND FED-  
16      ERAL RECREATIONAL LANDS PASS REVENUES.—Reve-  
17      nues collected from the sale of the National Parks and  
18      Federal Recreational Lands Pass shall be deposited in the  
19      special accounts established for the Federal land manage-  
20      ment agencies in accordance with the guidelines issued  
21      under section 5(a)(7).

22      (e) DISTRIBUTION OF REGIONAL MULTIENTITY PASS  
23      REVENUES.—Revenues collected from the sale of a re-  
24      gional multientity pass authorized under section 5(d) shall  
25      be deposited in each participating Federal land manage-



1 ment agency's special account in accordance with the  
2 terms of the region multientity pass agreement for the re-  
3 gional multientity pass.

4 **SEC. 8. EXPENDITURES.**

5 (a) USE OF FEES AT SPECIFIC SITE OR AREA.—

6 Amounts available for expenditure at a specific site or  
7 area—

8 (1) shall be accounted for separately from the  
9 amounts collected;

10 (2) may be distributed agency-wide; and

11 (3) shall be used only for—

12 (A) repair, maintenance, and facility en-  
13 hancement related directly to visitor enjoyment,  
14 visitor access, and health and safety;

15 (B) interpretation, visitor information, vis-  
16 itor service, visitor needs assessments, and  
17 signs;

18 (C) habitat restoration directly related to  
19 wildlife-dependent recreation that is limited to  
20 hunting, fishing, wildlife observation, or photog-  
21 raphy;

22 (D) law enforcement related to public use  
23 and recreation;

24 (E) direct operating or capital costs associ-  
25 ated with the recreation fee program; and

1 (F) a fee management agreement estab-  
2 lished under section 6(a) or a visitor reservation  
3 service.

4 (b) LIMITATION ON USE OF FEES.—The Secretary  
5 may not use any recreation fees for biological monitoring  
6 on Federal recreational lands and waters under the En-  
7 dangered Species Act of 1973 for listed or candidate spe-  
8 cies.

9 (c) ADMINISTRATION, OVERHEAD, AND INDIRECT  
10 COSTS.—The Secretary may use not more than an average  
11 of 15 percent of total revenues collected under this Act  
12 for administration, overhead, and indirect costs related to  
13 the recreation fee program by that Secretary.

14 (d) TRANSITIONAL EXCEPTION.—Notwithstanding  
15 any other provision of this Act, the Secretary may use  
16 amounts available in the special account of a Federal land  
17 management agency to supplement administration and  
18 marketing costs associated with—

19 (1) the National Parks and Federal Rec-  
20 reational Lands Pass during the five-year period be-  
21 ginning on the date the joint guidelines are issued  
22 under section 5(a)(7); and

23 (2) a regional multientity pass authorized sec-  
24 tion 5(d) during the five-year period beginning on



1 the date the regional multientity pass agreement for  
2 that recreation pass takes effect.

3 **SEC. 9. REPORTS.**

4 Not later than May 1, 2006, and every three years  
5 thereafter, the Secretary shall submit to the Congress a  
6 report detailing the status of the recreation fee program  
7 conducted for Federal recreational lands and waters, in-  
8 cluding an evaluation of the recreation fee program, exam-  
9 ples of projects that were funded using such fees, and fu-  
10 ture projects and programs for funding with fees, and con-  
11 taining any recommendations for changes in the overall  
12 fee system.

13 **SEC. 10. SUNSET PROVISION.**

14 The authority of the Secretary to carry out this Act  
15 shall terminate 10 years after the date of the enactment  
16 of this Act.

17 **SEC. 11. VOLUNTEERS.**

18 (a) **AUTHORITY TO USE VOLUNTEERS.**—The Sec-  
19 retary may use volunteers, as appropriate, to collect recre-  
20 ation fees and sell recreation passes.

21 (b) **WAIVER OR DISCOUNT OF FEES; SITE-SPECIFIC**  
22 **AGENCY PASS.**—In exchange for volunteer services, the  
23 Secretary may waive or discount an entrance fee, standard  
24 amenity recreation fee, or an expanded amenity recreation  
25 fee that would otherwise apply to the volunteer or issue



1 to the volunteer a site-specific agency pass authorized  
2 under section 5(c).

3 (c) NATIONAL PARKS AND FEDERAL RECREATIONAL  
4 LANDS PASS.—In accordance with the guidelines issued  
5 under section 5(a)(7), the Secretaries may issue a Na-  
6 tional Parks and Federal Recreational Lands Pass to a  
7 volunteer in exchange for significant volunteer services  
8 performed by the volunteer.

9 (d) REGIONAL MULTIENTITY PASSES.—The Sec-  
10 retary may issue a regional multientity pass authorized  
11 under section 5(d) to a volunteer in exchange for signifi-  
12 cant volunteer services performed by the volunteer, if the  
13 regional multientity pass agreement under which the re-  
14 gional multientity pass was established provides for the  
15 issuance of the pass to volunteers.

16 **SEC. 12. ENFORCEMENT AND PROTECTION OF RECEIPTS.**

17 (a) ENFORCEMENT AUTHORITY.—The Secretary con-  
18 cerned shall enforce payment of the recreation fees author-  
19 ized by this Act.

20 (b) EVIDENCE OF NONPAYMENT.—If the display of  
21 proof of payment of a recreation fee, or the payment of  
22 a recreation fee within a certain time period is required,  
23 failure to display such proof as required or to pay the  
24 recreation fee within the time period specified shall con-  
25 stitute nonpayment.

1 (b) RECREATIONAL FEE DEMONSTRATION PRO-  
2 GRAM.—Section 315 of the Department of the Interior  
3 and Related Agencies Appropriations Act, 1996 (as con-  
4 tained in section 101(c) of Public Law 104–134; 16  
5 U.S.C. 460l–6a), is repealed.

6 (c) ADMISSION PERMITS FOR REFUGE UNITS.—Sec-  
7 tion 201 of the Emergency Wetlands Resources Act of  
8 1986 (16 U.S.C. 3911) is repealed.

9 (d) NATIONAL PARK PASSPORT, GOLDEN EAGLE  
10 PASSPORT, GOLDEN AGE PASSPORT, AND GOLDEN AC-  
11 CESS PASSPORT.—Effective on the date the notice re-  
12 quired by section 5(a)(3) is published in the Federal Reg-  
13 ister, the following provisions of law authorizing the estab-  
14 lishment of a national park passport program or the estab-  
15 lishment and sale of a national park passport, Golden  
16 Eagle Passport, Golden Age Passport, or Golden Access  
17 Passport are repealed:

18 (1) Section 502 of the National Parks Omnibus  
19 Management Act of 1998 (Public Law 105–391; 16  
20 U.S.C. 5982).

21 (2) Title VI of the National Parks Omnibus  
22 Management Act of 1998 (Public Law 105–391; 16  
23 U.S.C. 5991–5995).

24 (e) TREATMENT OF UNOBLIGATED FUNDS.—



1           (1) LAND AND WATER CONSERVATION FUND  
2       SPECIAL ACCOUNTS.—Amounts in the special ac-  
3       counts established under section 4(i)(1) of the Land  
4       and Water Conservation Fund Act of 1965 (16  
5       U.S.C. 460l–6a(i)(1)) for Federal land management  
6       agencies that are unobligated on the date of the en-  
7       actment of this Act shall be transferred to the ap-  
8       propriate special account established under section 7  
9       and shall be available to the Secretary in accordance  
10      with this Act. A special account established under  
11      section 4(i)(1) of the Land and Water Conservation  
12      Fund Act of 1965 for a Federal agency that is not  
13      a Federal land management area, and the use of  
14      such special account, is not affected by the repeal of  
15      section 4 of the Land and Water Conservation Fund  
16      Act of 1965 by subsection (a) of this section.

17           (2) NATIONAL PARKS PASSPORT.—Any funds  
18      collected under title VI of the National Parks Omni-  
19      bus Management Act of 1998 (Public Law 105–391;  
20      16 U.S.C. 5991–5995) that are unobligated on the  
21      day before the publication of the Federal Register  
22      notice required under section 5(a)(3) shall be trans-  
23      ferred to the special account of the National Park  
24      Service for use in accordance with this Act. The Sec-  
25      retary of the Interior may use amounts available in



1       that special account to pay any outstanding adminis-  
2       tration, marketing, or close-out costs associated with  
3       the national parks passport.

4           (3) RECREATIONAL FEE DEMONSTRATION PRO-  
5       GRAM.—Any funds collected in accordance with sec-  
6       tion 315 of the Department of the Interior and Re-  
7       lated Agencies Appropriations Act, 1996 (as con-  
8       tained in section 101(c) of Public Law 104–134; 16  
9       U.S.C. 460l–6a), that are unobligated on the day be-  
10      fore the date of the enactment of this Act shall be  
11      transferred to the appropriate special account and  
12      shall be available to the Secretary in accordance  
13      with this Act.

14          (4) ADMISSION PERMITS FOR REFUGE UNITS.—  
15      Any funds collected in accordance with section 201  
16      of the Emergency Wetlands Resources Act of 1986  
17      (16 U.S.C. 3911) that are available as provided in  
18      subsection (c)(A) of such section and are unobli-  
19      gated on the day before the date of the enactment  
20      of this Act shall be transferred to the special ac-  
21      count of the United States Fish and Wildlife Service  
22      for use in accordance with this Act.

23          (f) EFFECT OF REGULATIONS.—A regulation or pol-  
24      icy issued under a provision of law repealed by this section  
25      shall remain in effect to the extent such a regulation or





1 policy is consistent with the provisions of this Act until  
2 the Secretary issues a regulation, guideline, or policy  
3 under this Act that supersedes the earlier regulation.

4 **SEC. 14. RELATION TO OTHER LAWS AND FEE COLLECTION**

5 **AUTHORITIES.**

6 (a) **FEDERAL AND STATE LAWS UNAFFECTED.—**

7 Nothing in this Act shall authorize Federal hunting or  
8 fishing licenses or fees or charges for commercial or other  
9 activities not related to recreation, affect any rights or au-  
10 thority of the States with respect to fish and wildlife, or  
11 repeal or modify any provision of law that permits States  
12 or political subdivisions of States to share in the revenues  
13 from Federal lands or, except as provided in subsection  
14 (b), any provision of law that provides that any fees or  
15 charges collected at particular Federal areas be used for  
16 or credited to specific purposes or special funds as author-  
17 ized by that provision of law.

18 (b) **RELATION TO REVENUE ALLOCATION LAWS.—**

19 Amounts collected under this Act, and the existence of a  
20 fee management agreement with a governmental entity  
21 under section 6(a), may not be taken into account for the  
22 purposes of any of the following laws:

- 23 (1) The sixth paragraph under the heading  
24 “FOREST SERVICE” in the Act of May 23, 1908 (16  
25 U.S.C. 500).

1           (2) Section 13 of the Act of March 1, 1911 (16  
2           U.S.C. 500; commonly known as the Weeks Act).

3           (3) The fourteenth paragraph under the head-  
4           ing "FOREST SERVICE" in the Act of March 4, 1913  
5           (16 U.S.C. 501).

6           (4) Section 33 of the Bankhead-Jones Farm  
7           Tenant Act (7 U.S.C. 1012).

8           (5) Title II of the Act of August 8, 1937, and  
9           the Act of May 24, 1939 (43 U.S.C. 1181f et seq.).

10          (6) Section 6 of the Act of June 14, 1926 (43  
11          U.S.C. 869-4).

12          (7) Chapter 69 of title 31, United States Code.

13          (8) Section 401 of the Act of June 15, 1935  
14          (16 U.S.C. 715s; commonly known as the Refuge  
15          Revenue Sharing Act).

16          (9) The Secure Rural Schools and Community  
17          Self-Determination Act of 2000 (Public Law 106-  
18          393; 16 U.S.C. 500 note), except that the exception  
19          made for such Act by this subsection is unique and  
20          is not intended to be construed as precedent for  
21          amounts collected from the use of Federal lands  
22          under any other provision of law.

23          (10) Section 2 of the Boulder Canyon Project  
24          Adjustment Act (43 U.S.C. 618a).



1 (11) The Federal Water Project Recreation Act  
2 (16 U.S.C. 460l-12 et seq.).

3 (12) The first section of the Act of June 17,  
4 1902, as amended or supplemented (43 U.S.C. 391).

5 (13) The Act of February 25, 1920 (30 U.S.C.  
6 181 et seq.; commonly known as the Mineral Leas-  
7 ing Act).

8 (14) Section 4(e) of the Southern Nevada Pub-  
9 lic Land Management Act of 1998 (Public Law  
10 105-263; 31 U.S.C. 6901 note).

11 (15) Section 5(a) of the Lincoln County Land  
12 Act of 2000 (Public Law 106-298; 114 Stat. 1047).

13 (16) Any other provision of law relating to rev-  
14 enue allocation.

15 (c) CONSIDERATION OF OTHER FUNDS COL-  
16 LECTED.—Amounts collected under any other law may not  
17 be disbursed under this Act.

18 (d) SOLE RECREATION FEE AUTHORITY.—Recre-  
19 ation fees charged under this Act shall be in lieu of fees  
20 charged for the same purposes under any other provision  
21 of law.

22 (e) FEES CHARGED BY THIRD PARTIES.—Notwith-  
23 standing any other provision of this Act, a third party may  
24 charge a fee for providing a good or service to a visitor



1 of a unit or area of the Federal land management agencies  
2 in accordance with any other applicable law or regulation.  
3 (f) MIGRATORY BIRD HUNTING STAMP ACT.—Reve-  
4 nues from the stamp established under the Act of March  
5 16, 1934 (16 U.S.C. 718 et seq.; commonly known as the  
6 Migratory Bird Hunting Stamp Act or Duck Stamp Act),  
7 shall not be covered by this Act.

^

insert 43a



43a

**Sec. 15. Limitation on use of fees for employee bonuses.**

Notwithstanding any other provision of law, fees collected under the authorities of this Act may not be used for employee bonuses.

TITLE IX - SATELLITE HOME VIEWER EXTENSION  
AND REAUTHORIZATION ACT OF 2004

~~AMENDMENT IN THE NATURE OF A SUBSTITUTE~~  
~~TO H.R. 4518~~  
~~OFFERED BY M~~

Strike all after the enacting clause and insert the  
following:

1 SECTION 1. SHORT TITLES; TABLE OF CONTENTS.

2 (a) SHORT TITLES.—This ~~Act~~ <sup>title</sup> may be cited as the  
3 “Satellite Home Viewer Extension and Reauthorization  
4 Act of 2004” or the “W. J. (Billy) Tauzin Satellite Tele-  
5 vision Act of 2004”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short titles; table of contents.

TITLE I—STATUTORY LICENSE FOR SATELLITE CARRIERS

Sec. 101. Extension of authority.

Sec. 102. Reporting of subscribers; significantly viewed and other signals; technical amendments.

Sec. 103. Statutory license for satellite carriers outside local markets.

Sec. 104. Statutory license for satellite retransmission of low power television stations.

Sec. 105. Definitions.

Sec. 106. Effect on certain proceedings.

Sec. 107. Statutory license for satellite carriers retransmitting superstation signals to commercial establishments.

Sec. 108. Expedited consideration of voluntary agreements to provide satellite secondary transmissions to local markets.

Sec. 109. Study.

Sec. 110. Additional study.

Sec. 111. Special rules.

Sec. 112. Technical amendment.

TITLE II—FEDERAL COMMUNICATIONS COMMISSION OPERATIONS

Sec. 201. Extension of retransmission consent exemption.

- Sec. 202. Cable/satellite comparability.  
Sec. 203. Carriage of local stations on a single dish.  
Sec. 204. Replacement of distant signals with local signals.  
Sec. 205. Additional notices to subscribers, networks, and stations concerning signal carriage.  
Sec. 206. Privacy rights of satellite subscribers.  
Sec. 207. Reciprocal bargaining obligations.  
Sec. 208. Study of impact on cable television service.  
Sec. 209. Reduction of required tests.  
Sec. 210. Satellite carriage of television stations in noncontiguous States.  
Sec. 211. Carriage of television signals to certain subscribers.  
Sec. 212. Digital transition savings provision.  
Sec. 213. Authorizing broadcast service in unserved areas of Alaska.

## 1     **TITLE I—STATUTORY LICENSE** 2     **FOR SATELLITE CARRIERS**

### 3     **SEC. 101. EXTENSION OF AUTHORITY.**

4         (a) IN GENERAL.—Section 4(a) of the Satellite Home  
5 Viewer Act of 1994 (17 U.S.C. 119 note; Public Law 103–  
6 369; 108 Stat. 3481) is amended by striking “December  
7 31, 2004” and inserting “December 31, 2009”.

8         (b) EXTENSION FOR CERTAIN SUBSCRIBERS.—Sec-  
9 tion 119(e) of title 17, United States Code, is amended  
10 by striking “December 31, 2004” and inserting “Decem-  
11 ber 31, 2009”.

### 12     **SEC. 102. REPORTING OF SUBSCRIBERS; SIGNIFICANTLY** 13             **VIEWED AND OTHER SIGNALS; TECHNICAL** 14             **AMENDMENTS.**

15         Section 119(a) of title 17, United States Code, is  
16 amended—

17             (1) in paragraph (1)—

18                 (A) in the paragraph heading, by striking  
19                 “AND PBS SATELLITE FEED”;



1 (B) in the first sentence, by striking “(3),  
2 (4), and (6)” and inserting “(5), (6), and (8)”;

3 (C) in the first sentence, by striking “or by  
4 the Public Broadcasting Service satellite feed”;  
5 and

6 (D) by striking the second sentence;  
7 (2) in paragraph (2)—

8 (A) in subparagraph (A), by striking “(3),  
9 (4), (5), and (6)” and inserting “(5), (6), (7),  
10 and (8)”; and

11 (B) by striking subparagraph (C) and in-  
12 serting the following:

13 “(C) EXCEPTIONS.—

14 “(i) STATES WITH SINGLE FULL-  
15 POWER NETWORK STATION.—In a State in  
16 which there is licensed by the Federal  
17 Communications Commission a single full-  
18 power station that was a network station  
19 on January 1, 1995, the statutory license  
20 provided for in subparagraph (A) shall  
21 apply to the secondary transmission by a  
22 satellite carrier of the primary trans-  
23 mission of that station to any subscriber in  
24 a community that is located within that  
25 State and that is not within the first 50





1 television markets as listed in the regula-  
2 tions of the Commission as in effect on  
3 such date (47 CFR 76.51).

4 “(ii) STATES WITH ALL NETWORK  
5 STATIONS AND SUPERSTATIONS IN SAME  
6 LOCAL MARKET.—In a State in which all  
7 network stations and superstations licensed  
8 by the Federal Communications Commis-  
9 sion within that State as of January 1,  
10 1995, are assigned to the same local mar-  
11 ket and that local market does not encom-  
12 pass all counties of that State, the statu-  
13 tory license provided under subparagraph  
14 (A) shall apply to the secondary trans-  
15 mission by a satellite carrier of the pri-  
16 mary transmissions of such station to all  
17 subscribers in the State who reside in a  
18 local market that is within the first 50  
19 major television markets as listed in the  
20 regulations of the Commission as in effect  
21 on such date (section 76.51 of title 47 of  
22 the Code of Federal Regulations).

23 “(iii) ADDITIONAL STATIONS.—In the  
24 case of that State in which are located 4  
25 counties that—



1                   “(I) on January 1, 2004, were in  
2                   local markets principally comprised of  
3                   counties in another State, and

4                   “(II) had a combined total of  
5                   41,340 television households, accord-  
6                   ing to the U.S. Television Household  
7                   Estimates by Nielsen Media Research  
8                   for 2004,

9                   the statutory license provided under sub-  
10                  paragraph (A) shall apply to secondary  
11                  transmissions by a satellite carrier to sub-  
12                  scribers in any such county of the primary  
13                  transmissions of any network station lo-  
14                  cated in that State, if the satellite carrier  
15                  was making such secondary transmissions  
16                  to any subscribers in that county on Janu-  
17                  ary 1, 2004.

18                  “(iv) CERTAIN ADDITIONAL STA-  
19                  TIONS.—If 2 adjacent counties in a single  
20                  State are in a local market comprised prin-  
21                  cipally of counties located in another State,  
22                  the statutory license provided for in sub-  
23                  paragraph (A) shall apply to the secondary  
24                  transmission by a satellite carrier to sub-  
25                  scribers in those 2 counties of the primary



1 transmissions of any network station lo-  
2 cated in the capital of the State in which  
3 such 2 counties are located, if—

4 “(I) the 2 counties are located in  
5 a local market that is in the top 100  
6 markets for the year 2003 according  
7 to Nielsen Media Research; and

8 “(II) the total number of tele-  
9 vision households in the 2 counties  
10 combined did not exceed 10,000 for  
11 the year 2003 according to Nielsen  
12 Media Research.

13 “(V) APPLICABILITY OF ROYALTY  
14 RATES.—The royalty rates under sub-  
15 section (b)(1)(B) apply to the secondary  
16 transmissions to which the statutory li-  
17 cense under subparagraph (A) applies  
18 under clauses (i), (ii), (iii), and (iv).

19 “(D) SUBMISSION OF SUBSCRIBER LISTS  
20 TO NETWORKS.—

21 “(i) INITIAL LISTS.—A satellite car-  
22 rier that makes secondary transmissions of  
23 a primary transmission made by a network  
24 station pursuant to subparagraph (A)  
25 shall, 90 days after commencing such sec-



1           ondary transmissions, submit to the net-  
2           work that owns or is affiliated with the  
3           network station—

4                   “(I) a list identifying (by name  
5                   and address, including street or rural  
6                   route number, city, State, and zip  
7                   code) all subscribers to which the sat-  
8                   ellite carrier makes secondary trans-  
9                   missions of that primary transmission  
10                  to subscribers in unserved households;  
11                  and

12                   “(II) a separate list, aggregated  
13                   by designated market area (as defined  
14                   in section 122(j)) (by name and ad-  
15                   dress, including street or rural route  
16                   number, city, State, and zip code),  
17                   which shall indicate those subscribers  
18                   being served pursuant to paragraph  
19                   (3), relating to significantly viewed  
20                   stations.

21                   “(ii) MONTHLY LISTS.—After the sub-  
22                   mission of the initial lists under clause (i),  
23                   on the 15th of each month, the satellite  
24                   carrier shall submit to the network—



1                   “(I) a list identifying (by name  
2                   and address, including street or rural  
3                   route number, city, State, and zip  
4                   code) any persons who have been  
5                   added or dropped as subscribers  
6                   under clause (i)(I) since the last sub-  
7                   mission under clause (i); and

8                   “(II) a separate list, aggregated  
9                   by designated market area (by name  
10                  and street address, including street or  
11                  rural route number, city, State, and  
12                  zip code), identifying those sub-  
13                  scribers whose service pursuant to  
14                  paragraph (3), relating to signifi-  
15                  cantly viewed stations, has been added  
16                  or dropped.

17                  “(iii) USE OF SUBSCRIBER INFORMA-  
18                  TION.—Subscriber information submitted  
19                  by a satellite carrier under this subpara-  
20                  graph may be used only for purposes of  
21                  monitoring compliance by the satellite car-  
22                  rier with this subsection.

23                  “(iv) APPLICABILITY.—The submis-  
24                  sion requirements of this subparagraph  
25                  shall apply to a satellite carrier only if the



1 network to which the submissions are to be  
2 made places on file with the Register of  
3 Copyrights a document identifying the  
4 name and address of the person to whom  
5 such submissions are to be made. The Reg-  
6 ister shall maintain for public inspection a  
7 file of all such documents.”;

8 (3) by striking paragraph (8);

9 (4) by redesignating paragraphs (9) through  
10 (12) as paragraphs (10) through (13), respectively;

11 (5) by redesignating paragraphs (3) through  
12 (7) as paragraphs (5) through (9), respectively;

13 (6) by inserting after paragraph (2) the fol-  
14 lowing:

15 “(3) SECONDARY TRANSMISSIONS OF SIGNIFI-  
16 CANTLY VIEWED SIGNALS.—

17 “(A) IN GENERAL.—Notwithstanding the  
18 provisions of paragraph (2)(B), and subject to  
19 subparagraph (B) of this paragraph, the statu-  
20 tory license provided for in paragraphs (1) and  
21 (2) shall apply to the secondary transmission of  
22 the primary transmission of a network station  
23 or a superstation to a subscriber who resides  
24 outside the station’s local market (as defined in  
25 section 122(j)) but within a community in



1           which the signal has been determined by the  
2           Federal Communications Commission, to be sig-  
3           nificantly viewed in such community, pursuant  
4           to the rules, regulations, and authorizations of  
5           the Federal Communications Commission in ef-  
6           fect on April 15, 1976, applicable to deter-  
7           mining with respect to a cable system whether  
8           signals are significantly viewed in a community.

9           “(B) LIMITATION.—Subparagraph (A)  
10          shall apply only to secondary transmissions of  
11          the primary transmissions of network stations  
12          and superstations to subscribers who receive  
13          secondary transmissions from a satellite carrier  
14          pursuant to the statutory license under section  
15          122.

16          “(C) WAIVER.—

17               “(i) IN GENERAL.—A subscriber who  
18               is denied the secondary transmission of the  
19               primary transmission of a network station  
20               under subparagraph (B) may request a  
21               waiver from such denial by submitting a  
22               request, through the subscriber’s satellite  
23               carrier, to the network station in the local  
24               market affiliated with the same network  
25               where the subscriber is located. The net-



1 work station shall accept or reject the sub-  
2 scribe's request for a waiver within 30  
3 days after receipt of the request. If the  
4 network station fails to accept or reject the  
5 subscriber's request for a waiver within  
6 that 30-day period, that network station  
7 shall be deemed to agree to the waiver re-  
8 quest. Unless specifically stated by the net-  
9 work station, a waiver that was granted  
10 before the date of the enactment of the  
11 Satellite Home Viewer Extension and Re-  
12 authorization Act of 2004 under section  
13 339(c)(2) of the Communications Act of  
14 1934 shall not constitute a waiver for pur-  
15 poses of this subparagraph.

16 “(ii) SUNSET.—The authority under  
17 clause (i) to grant waivers shall terminate  
18 on December 31, 2008, and any such waiv-  
19 er in effect shall terminate on that date.”;

20 (7) in paragraph (2)(B)(i), by adding at the  
21 end the following new sentence: “The limitation in  
22 this clause shall not apply to secondary trans-  
23 missions under paragraph (3).”.





1   **SEC. 103. STATUTORY LICENSE FOR SATELLITE CARRIERS**  
2                   **OUTSIDE LOCAL MARKETS.**

3       Section 119 of title 17, United States Code, is  
4   amended as follows:

5           (1) Subsection (a) is amended by inserting after  
6       paragraph (3), as added by section 102 of this Act,  
7       the following:

8           “(4) STATUTORY LICENSE WHERE RETRANS-  
9       MISSIONS INTO LOCAL MARKET AVAILABLE.—

10           “(A) RULES FOR SUBSCRIBERS TO ANALOG  
11       SIGNALS UNDER SUBSECTION (e).—

12           “(i) FOR THOSE RECEIVING DISTANT  
13       ANALOG SIGNALS.—In the case of a sub-  
14       scriber of a satellite carrier who is eligible  
15       to receive the secondary transmission of  
16       the primary analog transmission of a net-  
17       work station solely by reason of subsection  
18       (e) (in this subparagraph referred to as a  
19       ‘distant analog signal’), and who, as of Oc-  
20       tober 1, 2004, is receiving the distant ana-  
21       log signal of that network station, the fol-  
22       lowing shall apply:

23           “(I) In a case in which the sat-  
24       ellite carrier makes available to the  
25       subscriber the secondary transmission  
26       of the primary analog transmission of



1 a local network station affiliated with  
2 the same television network pursuant  
3 to the statutory license under section  
4 122, the statutory license under para-  
5 graph (2) shall apply only to sec-  
6 ondary transmissions by that satellite  
7 carrier to that subscriber of the dis-  
8 tant analog signal of a station affili-  
9 ated with the same television  
10 network—

11 “(aa) if, within 60 days  
12 after receiving the notice of the  
13 satellite carrier under section  
14 338(h)(1) of the Communications  
15 Act of 1934, the subscriber elects  
16 to retain the distant analog sig-  
17 nal; but

18 “(bb) only until such time as  
19 the subscriber elects to receive  
20 such local analog signal.

21 “(II) Notwithstanding subelause  
22 (I), the statutory license under para-  
23 graph (2) shall not apply with respect  
24 to any subscriber who is eligible to re-  
25 ceive the distant analog signal of a



1 television network station solely by  
2 reason of subsection (e), unless the  
3 satellite carrier, within 60 days after  
4 the date of the enactment of the Sat-  
5 ellite Home Viewer Extension and Re-  
6 uthorization Act of 2004, submits to  
7 that television network a list, aggre-  
8 gated by designated market area (as  
9 defined in section 122(j)(2)(C)),  
10 that—

11 “(aa) identifies that sub-  
12 scriber by name and address  
13 (street or rural route number,  
14 city, State, and zip code) and  
15 specifies the distant analog sig-  
16 nals received by the subscriber;  
17 and

18 “(bb) states, to the best of  
19 the satellite carrier’s knowledge  
20 and belief, after having made  
21 diligent and good faith inquiries,  
22 that the subscriber is eligible  
23 under subsection (e) to receive  
24 the distant analog signals.



1                   “(ii) FOR THOSE NOT RECEIVING DIS-  
2                   TANT ANALOG SIGNALS.—In the case of  
3                   any subscriber of a satellite carrier who is  
4                   eligible to receive the distant analog signal  
5                   of a network station solely by reason of  
6                   subsection (e) and who did not receive a  
7                   distant analog signal of a station affiliated  
8                   with the same network on October 1, 2004,  
9                   the statutory license under paragraph (2)  
10                  shall not apply to secondary transmissions  
11                  by that satellite carrier to that subscriber  
12                  of the distant analog signal of a station af-  
13                  filiated with the same network.

14                  “(B) RULES FOR OTHER SUBSCRIBERS.—  
15                  In the case of a subscriber of a satellite carrier  
16                  who is eligible to receive the secondary trans-  
17                  mission of the primary analog transmission of  
18                  a network station under the statutory license  
19                  under paragraph (2) (in this subparagraph re-  
20                  ferred to as a ‘distant analog signal’), other  
21                  than subscribers to whom subparagraph (A) ap-  
22                  plies, the following shall apply:

23                         “(i) In a case in which the satellite  
24                         carrier makes available to that subscriber,  
25                         on January 1, 2005, the secondary trans-



1 mission of the primary analog transmission  
2 of a local network station affiliated with  
3 the same television network pursuant to  
4 the statutory license under section 122, the  
5 statutory license under paragraph (2) shall  
6 apply only to secondary transmissions by  
7 that satellite carrier to that subscriber of  
8 the distant analog signal of a station affili-  
9 ated with the same television network if  
10 the subscriber's satellite carrier, not later  
11 than March 1, 2005, submits to that tele-  
12 vision network a list, aggregated by des-  
13 ignated market area (as defined in section  
14 122(j)(2)(C)), that identifies that sub-  
15 scriber by name and address (street or  
16 rural route number, city, State, and zip  
17 code) and specifies the distant analog sig-  
18 nals received by the subscriber.

19 “(ii) In a case in which the satellite  
20 carrier does not make available to that  
21 subscriber, on January 1, 2005, the sec-  
22 ondary transmission of the primary analog  
23 transmission of a local network station af-  
24 filiated with the same television network  
25 pursuant to the statutory license under



1 section 122, the statutory license under  
2 paragraph (2) shall apply only to sec-  
3 ondary transmissions by that satellite car-  
4 rier of the distant analog signal of a sta-  
5 tion affiliated with the same network to  
6 that subscriber if—

7 “(I) that subscriber seeks to sub-  
8 scribe to such distant analog signal  
9 before the date on which such carrier  
10 commences to provide pursuant to the  
11 statutory license under section 122  
12 the secondary transmissions of the  
13 primary analog transmission of sta-  
14 tions from the local market of such  
15 local network station; and

16 “(II) the satellite carrier, within  
17 60 days after such date, submits to  
18 each television network a list that  
19 identifies each subscriber in that local  
20 market provided such an analog signal  
21 by name and address (street or rural  
22 route number, city, State, and zip  
23 code) and specifies the distant analog  
24 signals received by the subscriber.



1           “(C) FUTURE APPLICABILITY.—The statu-  
2           tory license under paragraph (2) shall not apply  
3           to the secondary transmission by a satellite car-  
4           rier of a primary analog transmission of a net-  
5           work station to a person who—

6                   “(i) is not a subscriber lawfully receiv-  
7                   ing such secondary transmission as of the  
8                   date of the enactment of the Satellite  
9                   Home Viewer Extension and Reauthoriza-  
10                  tion Act of 2004; and

11                  “(ii) at the time such person seeks to  
12                  subscribe to receive such secondary trans-  
13                  mission, resides in a local market where  
14                  the satellite carrier makes available to that  
15                  person the secondary transmission of the  
16                  primary analog transmission of a local net-  
17                  work station affiliated with the same tele-  
18                  vision network pursuant to the statutory li-  
19                  cense under section 122, and such sec-  
20                  ondary transmission of such primary  
21                  transmission can reach such person.

22           “(D) SPECIAL RULES FOR DISTANT DIG-  
23           ITAL SIGNALS.—The statutory license under  
24           paragraph (2) shall apply to secondary trans-  
25           missions by a satellite carrier to a subscriber of



1 primary digital transmissions of network sta-  
2 tions if such secondary transmissions to such  
3 subscriber are permitted under section  
4 339(a)(2)(D) of the Communications Act of  
5 1934, as in effect on the day after the date of  
6 the enactment of the Satellite Home Viewer Ex-  
7 tension and Reauthorization Act of 2004, ex-  
8 cept that the reference to section 73.683(a) of  
9 title 47, Code of Federal Regulations, referred  
10 to in section 339(a)(2)(D)(i)(I) shall refer to  
11 such section as in effect on the date of the en-  
12 actment of the Satellite Home Viewer Exten-  
13 sion and Reauthorization Act of 2004.

14 “(E) OTHER PROVISIONS NOT AF-  
15 FECTED.—This paragraph shall not affect the  
16 applicability of the statutory license to sec-  
17 ondary transmissions under paragraph (3) or to  
18 unserved households included under paragraph  
19 (12).

20 “(F) WAIVER.—A subscriber who is denied  
21 the secondary transmission of a network station  
22 under subparagraph (C) or (D) may request a  
23 waiver from such denial by submitting a re-  
24 quest, through the subscriber’s satellite carrier,  
25 to the network station in the local market affili-





1           ated with the same network where the sub-  
2           scriber is located. The network station shall ac-  
3           cept or reject the subscriber's request for a  
4           waiver within 30 days after receipt of the re-  
5           quest. If the network station fails to accept or  
6           reject the subscriber's request for a waiver  
7           within that 30-day period, that network station  
8           shall be deemed to agree to the waiver request.  
9           Unless specifically stated by the network sta-  
10          tion, a waiver that was granted before the date  
11          of the enactment of the Satellite Home Viewer  
12          Extension and Reauthorization Act of 2004  
13          under section 339(c)(2) of the Communications  
14          Act of 1934 shall not constitute a waiver for  
15          purposes of this subparagraph.

16               “(G) AVAILABLE DEFINED.—For purposes  
17          of this paragraph, a satellite carrier makes  
18          available a secondary transmission of the pri-  
19          mary transmission of a local station to a sub-  
20          scriber or person if the satellite carrier offers  
21          that secondary transmission to other sub-  
22          scribers who reside in the same zip code as that  
23          subscriber or person.”.

24               (2) Subsection (a) is amended by adding at the  
25          end the following:



1           “(14) WAIVERS.—A subscriber who is denied  
2           the secondary transmission of a signal of a network  
3           station under subsection (a)(2)(B) may request a  
4           waiver from such denial by submitting a request,  
5           through the subscriber’s satellite carrier, to the net-  
6           work station asserting that the secondary trans-  
7           mission is prohibited. The network station shall ac-  
8           cept or reject a subscriber’s request for a waiver  
9           within 30 days after receipt of the request. If a tele-  
10          vision network station fails to accept or reject a sub-  
11          scriber’s request for a waiver within the 30-day pe-  
12          riod after receipt of the request, that station shall be  
13          deemed to agree to the waiver request and have filed  
14          such written waiver. Unless specifically stated by the  
15          network station, a waiver that was granted before  
16          the date of the enactment of the Satellite Home  
17          Viewer Extension and Reauthorization Act of 2004  
18          under section 339(c)(2) of the Communications Act  
19          of 1934, and that was in effect on such date of en-  
20          actment, shall constitute a waiver for purposes of  
21          this paragraph.”.

22           (3) Subsection (b)(1) is amended by striking  
23          subparagraph (B) and inserting the following:

24                   “(B) a royalty fee for that 6-month period,  
25                   computed by multiplying the total number of



1 subscribers receiving each secondary trans-  
2 mission of each superstation or network station  
3 during each calendar month by the appropriate  
4 rate in effect under this section.”.

5 (4) Subsection (b)(1) is further amended by  
6 adding at the end the following flush sentence:  
7 “Notwithstanding the provisions of subparagraph  
8 (B), a satellite carrier whose secondary trans-  
9 missions are subject to statutory licensing under  
10 paragraph (1) or (2) of subsection (a) shall have no  
11 royalty obligation for secondary transmissions to a  
12 subscriber under paragraph (3) of such subsection.”.

13 (5) Subsection (c) is amended to read as fol-  
14 lows:

15 “(c) ADJUSTMENT OF ROYALTY FEES.—

16 “(1) APPLICABILITY AND DETERMINATION OF  
17 ROYALTY FEES FOR ANALOG SIGNALS.—

18 “(A) INITIAL FEE.—The appropriate fee  
19 for purposes of determining the royalty fee  
20 under subsection (b)(1)(B) for the secondary  
21 transmission of the primary analog trans-  
22 missions of network stations and superstations  
23 shall be the appropriate fee set forth in part  
24 258 of title 37, Code of Federal Regulations, as



1 in effect on July 1, 2004, as modified under  
2 this paragraph.

3 “(B) FEE SET BY VOLUNTARY NEGOTIA-  
4 TION.—On or before January 2, 2005, the Li-  
5 brarian of Congress shall cause to be published  
6 in the Federal Register of the initiation of vol-  
7 untary negotiation proceedings for the purpose  
8 of determining the royalty fee to be paid by sat-  
9 ellite carriers for the secondary transmission of  
10 the primary analog transmission of network  
11 stations and superstations under subsection  
12 (b)(1)(B).

13 “(C) NEGOTIATIONS.—Satellite carriers,  
14 distributors, and copyright owners entitled to  
15 royalty fees under this section shall negotiate in  
16 good faith in an effort to reach a voluntary  
17 agreement or agreements for the payment of  
18 royalty fees. Any such satellite carriers, dis-  
19 tributors and copyright owners may at any time  
20 negotiate and agree to the royalty fee, and may  
21 designate common agents to negotiate, agree to,  
22 or pay such fees. If the parties fail to identify  
23 common agents, the Librarian of Congress shall  
24 do so, after requesting recommendations from  
25 the parties to the negotiation proceeding. The



1 parties to each negotiation proceeding shall  
2 bear the cost thereof.

3 “(D) AGREEMENTS BINDING ON PARTIES;  
4 FILING OF AGREEMENTS; PUBLIC NOTICE.—(i)  
5 Voluntary agreements negotiated at any time in  
6 accordance with this paragraph shall be binding  
7 upon all satellite carriers, distributors, and  
8 copyright owners that a parties thereto. Copies  
9 of such agreements shall be filed with the Copy-  
10 right Office within 30 days after execution in  
11 accordance with regulations that the Register of  
12 Copyrights shall prescribe.

13 “(ii)(I) Within 10 days after publication in  
14 the Federal Register of a notice of the initiation  
15 of voluntary negotiation proceedings, parties  
16 who have reached a voluntary agreement may  
17 request that the royalty fees in that agreement  
18 be applied to all satellite carriers, distributors,  
19 and copyright owners without convening an ar-  
20 bitration proceeding pursuant to subparagraph  
21 (E).

22 “(II) Upon receiving a request under sub-  
23 clause (I), the Librarian of Congress shall im-  
24 mediately provide public notice of the royalty  
25 fees from the voluntary agreement and afford



1 parties an opportunity to state that they object  
2 to those fees.

3 “(III) The Librarian shall adopt the roy-  
4 alty fees from the voluntary agreement for all  
5 satellite carriers, distributors, and copyright  
6 owners without convening an arbitration pro-  
7 ceeding unless a party with an intent to partici-  
8 pate in the arbitration proceeding and a signifi-  
9 cant interest in the outcome of that proceeding  
10 objects under subclause (II).

11 “(E) PERIOD AGREEMENT IS IN EF-  
12 FECT.—The obligation to pay the royalty fees  
13 established under a voluntary agreement which  
14 has been filed with the Copyright Office in ac-  
15 cordance with this paragraph shall become ef-  
16 fective on the date specified in the agreement,  
17 and shall remain in effect until December 31,  
18 2009, or in accordance with the terms of the  
19 agreement, whichever is later.

20 “(F) FEE SET BY COMPULSORY ARBITRA-  
21 TION.—

22 “(i) NOTICE OF INITIATION OF PRO-  
23 CEEDINGS.—On or before May 1, 2005,  
24 the Librarian of Congress shall cause no-  
25 tice to be published in the Federal Register



1 of the initiation of arbitration proceedings  
2 for the purpose of determining the royalty  
3 fee to be paid for the secondary trans-  
4 mission of primary analog transmission of  
5 network stations and superstations under  
6 subsection (b)(1)(B) by satellite carriers  
7 and distributors

8 “(I) in the absence of a voluntary  
9 agreement filed in accordance with  
10 subparagraph (D) that establishes  
11 royalty fees to be paid by all satellite  
12 carriers and distributors; or

13 “(II) if an objection to the fees  
14 from a voluntary agreement submitted  
15 for adoption by the Librarian of Con-  
16 gress to apply to all satellite carriers,  
17 distributors, and copyright owners is  
18 received under subparagraph (D)  
19 from a party with an intent to partici-  
20 pate in the arbitration proceeding and  
21 a significant interest in the outcome  
22 of that proceeding.

23 Such arbitrary proceeding shall be con-  
24 ducted under chapter 8 as in effect on the  
25 day before the date of the enactment of the



1 Copyright Royalty and Distribution Act of  
2 2004.

3 “(ii) ESTABLISHMENT OF ROYALTY  
4 FEES.—In determining royalty fees under  
5 this subparagraph, the copyright arbitra-  
6 tion royalty panel appointed under chapter  
7 8, as in effect on the day before the date  
8 of the enactment of the Copyright Royalty  
9 and Distribution Act of 2004 shall estab-  
10 lish fees for the secondary transmissions of  
11 the primary analog transmission of net-  
12 work stations and superstations that most  
13 clearly represent the fair market value of  
14 secondary transmissions, except that the  
15 Librarian of Congress and any copyright  
16 arbitration royalty panel shall adjust those  
17 fees to account for the obligations of the  
18 parties under any applicable voluntary  
19 agreement filed with the Copyright Office  
20 pursuant to subparagraph (D). In deter-  
21 mining the fair market value, the panel  
22 shall base its decision on economic, com-  
23 petitive, and programming information  
24 presented by the parties, including—





1                   “(I) the competitive environment  
2                   in which such programming is distrib-  
3                   uted, the cost of similar signals in  
4                   similar private and compulsory license  
5                   marketplaces, and any special features  
6                   and conditions of the retransmission  
7                   marketplace;

8                   “(II) the economic impact of  
9                   such fees on copyright owners and  
10                  satellite carriers; and

11                  “(III) the impact on the contin-  
12                  ued availability of secondary trans-  
13                  missions to the public.

14                  “(iii) PERIOD DURING WHICH DECI-  
15                  SION OF ARBITRATION PANEL OR ORDER  
16                  OF LIBRARIAN EFFECTIVE.—The obliga-  
17                  tion to pay the royalty fee established  
18                  under a determination which—

19                  “(I) is made by a copyright arbi-  
20                  tration royalty panel in an arbitration  
21                  proceeding under this paragraph and  
22                  is adopted by the Librarian of Con-  
23                  gress under section 802(f), as in ef-  
24                  fect on the day before the date of the



1 enactment of the Copyright Royalty  
2 and Distribution Act of 2004; or

3 “(II) is established by the Li-  
4 brarian under section 802(f) as in ef-  
5 fect on the day before such date of en-  
6 actment shall be effective as of Janu-  
7 ary 1, 2005.

8 “(iv) PERSONS SUBJECT TO ROYALTY  
9 FEE.—The royalty fee referred to in (iii)  
10 shall be binding on all satellite carriers,  
11 distributors and copyright owners, who are  
12 not party to a voluntary agreement filed  
13 with the Copyright Office under subpara-  
14 graph (D).

15 “(2) APPLICABILITY AND DETERMINATION OF  
16 ROYALTY FEES FOR DIGITAL SIGNALS.—The process  
17 and requirements for establishing the royalty fee  
18 payable under subsection (b)(1)(B) for the sec-  
19 ondary transmission of the primary digital trans-  
20 missions of network stations and superstations shall  
21 be the same as that set forth in paragraph (1) for  
22 the secondary transmission of the primary analog  
23 transmission of network stations and superstations,  
24 except that—



1 “(A) the initial fee under paragraph (1)(A)  
2 shall be the rates set forth in section  
3 298.3(b)(1) and (2) of title 37, Code of Federal  
4 Regulations, as in effect on the date of the en-  
5 actment of the Satellite Home Viewer Exten-  
6 sion and Reauthorization Act of 2004, reduced  
7 by 22.5 percent;

8 “(B) the notice of initiation of arbitration  
9 proceedings required in paragraph (1)(F)(i)  
10 shall be published on or before December 31,  
11 2005; and

12 “(C) the royalty fees that are established  
13 for the secondary transmission of the primary  
14 digital transmission of network stations and  
15 superstations in accordance with to the proce-  
16 dures set forth in paragraph (1)(F)(iii) and are  
17 payable under subsection (b)(1)(B)—

18 “(i) shall be reduced by 22.5 percent;  
19 and

20 “(ii) shall be adjusted by the Librar-  
21 ian of Congress on January 1, 2007, and  
22 on January 1 of each year thereafter, to  
23 reflect any changes occurring during the  
24 preceding 12 months in the cost of living  
25 as determined by the most recent Con-



1           sumer Price Index (for all consumers and  
2           items) published by the Secretary of  
3           Labor.”.

4           (6) Subsection (a)(7), as redesignated by sec-  
5   tion 102(5) of this Act, is amended—

6           (A) in subparagraph (A), by striking “who  
7           does not reside in an unserved household” and  
8           inserting “who is not eligible to receive the  
9           transmission under this section”;

10          (B) in subparagraph (B), by striking “who  
11          do not reside in unserved households” and in-  
12          serting “who are not eligible to receive the  
13          transmission under this section”; and

14          (C) in subparagraph (D), by striking “is  
15          for private home viewing to an unserved house-  
16          hold” and inserting “is to a subscriber who is  
17          eligible to receive the secondary transmission  
18          under this section”.

19   **SEC. 104. STATUTORY LICENSE FOR SATELLITE RETRANS-**  
20                   **MISSION OF LOW POWER TELEVISION STA-**  
21                   **TIONS.**

22          (a) IN GENERAL.—Section 119(a) of title 17, United  
23   States Code (as amended by sections 102 and 103 of this  
24   Act), is further amended by adding at the end the fol-  
25   lowing:



1           “(15) CARRIAGE OF LOW POWER TELEVISION  
2           STATIONS.—

3           “(A) IN GENERAL.—Notwithstanding para-  
4           graph (2)(B), and subject to subparagraphs (B)  
5           through (F) of this paragraph, the statutory li-  
6           cense provided for in paragraphs (1) and (2)  
7           shall apply to the secondary transmission of the  
8           primary transmission of a network station or a  
9           superstation that is licensed as a low power tel-  
10          evision station, to a subscriber who resides  
11          within the same local market.

12          “(B) GEOGRAPHIC LIMITATION.—

13          “(i) NETWORK STATIONS.—With re-  
14          spect to network stations, secondary trans-  
15          missions provided for in subparagraph (A)  
16          shall be limited to secondary transmissions  
17          to subscribers who—

18                  “(I) reside in the same local mar-  
19                  ket as the station originating the sig-  
20                  nal; and

21                  “(II) reside within 35 miles of  
22                  the transmitter site of such station,  
23                  except that in the case of such a sta-  
24                  tion located in a standard metropoli-  
25                  tan statistical area which has 1 of the



1                   50 largest populations of all standard  
2                   metropolitan statistical areas (based  
3                   on the 1980 decennial census of popu-  
4                   lation taken by the Secretary of Com-  
5                   merce), the number of miles shall be  
6                   20.

7                   “(ii) SUPERSTATIONS.—With respect  
8                   to superstations, secondary transmissions  
9                   provided for in subparagraph (A) shall be  
10                  limited to secondary transmissions to sub-  
11                  scribers who reside in the same local mar-  
12                  ket as the station originating the signal.

13                  “(C) NO APPLICABILITY TO REPEATERS  
14                  AND TRANSLATORS.—Secondary transmissions  
15                  provided for in subparagraph (A) shall not  
16                  apply to any low power television station that  
17                  retransmits the programs and signals of an-  
18                  other television station for more than 2 hours  
19                  each day.

20                  “(D) ROYALTY FEES.—Notwithstanding  
21                  subsection (b)(1)(B), a satellite carrier whose  
22                  secondary transmissions of the primary trans-  
23                  missions of a low power television station are  
24                  subject to statutory licensing under this section  
25                  shall have no royalty obligation for secondary



1 transmissions to a subscriber who resides within  
2 35 miles of the transmitter site of such station,  
3 except that in the case of such a station located  
4 in a standard metropolitan statistical area  
5 which has 1 of the 50 largest populations of all  
6 standard metropolitan statistical areas (based  
7 on the 1980 decennial census of population  
8 taken by the Secretary of Commerce), the num-  
9 ber of miles shall be 20. Carriage of a supersta-  
10 tion that is a low power television station within  
11 the station's local market, but outside of the  
12 35-mile or 20-mile radius described in the pre-  
13 ceding sentence, shall be subject to royalty pay-  
14 ments under section (b)(1)(B).

15 “(E) LIMITATION TO SUBSCRIBERS TAK-  
16 ING LOCAL-INTO-LOCAL SERVICE.—Secondary  
17 transmissions provided for in subparagraph (A)  
18 may be made only to subscribers who receive  
19 secondary transmissions of primary trans-  
20 missions from that satellite carrier pursuant to  
21 the statutory license under section 122, and  
22 only in conformity with the requirements under  
23 340(b) of the Communications Act of 1934, as  
24 in effect on the date of the enactment of the



1           Satellite Home Viewer Extension and Reauthor-  
2           ization Act of 2004.”.

3   **SEC. 105. DEFINITIONS.**

4       Section 119(d) of title 17, United States Code, is  
5   amended—

6           (1) in paragraph (2)(A), by striking “a tele-  
7       vision broadcast station” and inserting “a television  
8       station licensed by the Federal Communications  
9       Commission”;

10          (2) by amending paragraph (9) to read as fol-  
11       lows:

12           “(9) SUPERSTATION.—The term ‘superstation’  
13       means a television station, other than a network sta-  
14       tion, licensed by the Federal Communications Com-  
15       mission, that is secondarily transmitted by a satellite  
16       carrier.”;

17          (3) in paragraph (10)—

18           (A) in subparagraph (B), by striking  
19       “granted under regulations established under  
20       section 339(c)(2) of the Communications Act of  
21       1934” and inserting “that meets the standards  
22       of subsection (a)(14) whether or not the waiver  
23       was granted before the date of the enactment of  
24       the Satellite Home Viewer Extension and Reau-  
25       thorization Act of 2004”; and





1 (B) in subparagraph (D), by striking  
2 “(a)(11)” and inserting “(a)(12)”; and  
3 (4) by striking paragraphs (11) and (12) and  
4 inserting the following:

5 “(11) LOCAL MARKET.—The term ‘local mar-  
6 ket’ has the meaning given such term under section  
7 122(j), except that with respect to a low power tele-  
8 vision station, the term ‘local market’ means the  
9 designated market area in which the station is lo-  
10 cated.

11 “(12) LOW POWER TELEVISION STATION.—The  
12 term ‘low power television station’ means a low  
13 power television as defined under section 74.701(f)  
14 of title 47, Code of Federal Regulations, as in effect  
15 on June 1, 2004. For purposes of this paragraph,  
16 the term ‘low power television station’ includes a low  
17 power television station that has been accorded pri-  
18 mary status as a Class A television licensee under  
19 section 73.6001(a) of title 47, Code of Federal Reg-  
20 ulations.

21 “(13) COMMERCIAL ESTABLISHMENT.—The  
22 term ‘commercial establishment’—

23 “(A) means an establishment used for  
24 commercial purposes, such as a bar, restaurant,  
25 private office, fitness club, oil rig, retail store,



1 bank or other financial institution, super-  
2 market, automobile or boat dealership, or any  
3 other establishment with a common business  
4 area; and

5 “(B) does not include a multi-unit perma-  
6 nent or temporary dwelling where private home  
7 viewing occurs, such as a hotel, dormitory, hos-  
8 pital, apartment, condominium, or prison.”.

9 **SEC. 106. EFFECT ON CERTAIN PROCEEDINGS.**

10 Nothing in this title shall modify any remedy imposed  
11 on a party that is required by the judgment of a court  
12 in any action that was brought before May 1, 2004,  
13 against that party for a violation of section 119 of title  
14 17, United States Code.

15 **SEC. 107. STATUTORY LICENSE FOR SATELLITE CARRIERS**  
16 **RETRANSMITTING SUPERSTATION SIGNALS**  
17 **TO COMMERCIAL ESTABLISHMENTS.**

18 (a) IN GENERAL.—Section 119 of title 17, United  
19 States Code, is amended—

20 (1) in subsection (a)(1)—

21 (A) by inserting “or for viewing in a com-  
22 mercial establishment” after “for private home  
23 viewing” each place it appears; and

24 (B) by striking “household” and inserting  
25 “subscriber”;



1 (2) in subsection (b), by striking “for private  
2 home viewing” each place it appears;

3 (3) in subsection (d)(1)—

4 (A) by striking “for private home viewing”;  
5 and

6 (B) by inserting “in accordance with the  
7 provisions of this section” before the period;

8 (4) in subsection (d)(6), by inserting “pursuant  
9 to this section” before the period; and

10 (5) in subsection (d)(8)—

11 (A) by striking “who” and inserting “or  
12 entity that”;

13 (B) by striking “for private home view-  
14 ing”; and

15 (C) by inserting “in accordance with the  
16 provisions of this section” before the period.

17 (b) CONFORMING AMENDMENTS.—Subsections (a)(4)  
18 and (d)(1)(A) of section 111 of title 17, United States  
19 Code, are each amended by striking “for private home  
20 viewing”.



1 **SEC. 108. EXPEDITED CONSIDERATION OF VOLUNTARY**  
2 **AGREEMENTS TO PROVIDE SATELLITE SEC-**  
3 **ONDARY TRANSMISSIONS TO LOCAL MAR-**  
4 **KETS.**

5 Section 119 of title 17, United States Code, is  
6 amended by adding at the end the following:

7 “(f) EXPEDITED CONSIDERATION BY JUSTICE DE-  
8 PARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE  
9 SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MAR-  
10 KETS.—

11 “(1) IN GENERAL.—In a case in which no sat-  
12 ellite carrier makes available, to subscribers located  
13 in a local market, as defined in section 122(j)(2),  
14 the secondary transmission into that market of a  
15 primary transmission of one or more television  
16 broadcast stations licensed by the Federal Commu-  
17 nications Commission, and two or more satellite car-  
18 riers request a business review letter in accordance  
19 with section 50.6 of title 28, Code of Federal Regu-  
20 lations (as in effect on July 7, 2004), in order to as-  
21 sess the legality under the antitrust laws of proposed  
22 business conduct to make or carry out an agreement  
23 to provide such secondary transmission into such  
24 local market, the appropriate official of the Depart-  
25 ment of Justice shall respond to the request no later



1       than 90 days after the date on which the request is  
2       received.

3               “(2) DEFINITION.—For purposes of this sub-  
4       section, the term ‘antitrust laws’—

5               “(A) has the meaning given that term in  
6       subsection (a) of the first section of the Clayton  
7       Act (15 U.S.C. 12(a)), except that such term  
8       includes section 5 of the Federal Trade Com-  
9       mission Act (15 U.S.C. 45) to the extent such  
10       section 5 applies to unfair methods of competi-  
11       tion; and

12               “(B) includes any State law similar to the  
13       laws referred to in paragraph (1).”.

14   **SEC. 109. STUDY.**

15       No later than June 30, 2008, the Register of Copy-  
16       rights shall report to the Committee on the Judiciary of  
17       the House of Representatives and the Committee on the  
18       Judiciary of the Senate the Register’s findings and rec-  
19       ommendations on the operation and revision of the statu-  
20       tory licenses under sections 111, 119, and 122 of title 17,  
21       United States Code. The report shall include, but not be  
22       limited to, the following:

23               (1) A comparison of the royalties paid by licens-  
24       ees under such sections, including historical rates of  
25       increases in these royalties, a comparison between



1 the royalties under each such section and the prices  
2 paid in the marketplace for comparable program-  
3 ming.

4 (2) An analysis of the differences in the terms  
5 and conditions of the licenses under such sections,  
6 an analysis of whether these differences are required  
7 or justified by historical, technological, or regulatory  
8 differences that affect the satellite and cable indus-  
9 tries, and an analysis of whether the cable or sat-  
10 ellite industry is placed in a competitive disadvan-  
11 tage due to these terms and conditions.

12 (3) An analysis of whether the licenses under  
13 such sections are still justified by the bases upon  
14 which they were originally created.

15 (4) An analysis of the correlation, if any, be-  
16 tween the royalties, or lack thereof, under such sec-  
17 tions and the fees charged to cable and satellite sub-  
18 sscribers, addressing whether cable and satellite com-  
19 panies have passed to subscribers any savings real-  
20 ized as a result of the royalty structure and amounts  
21 under such sections.

22 (5) An analysis of issues that may arise with  
23 respect to the application of the licenses under such  
24 sections to the secondary transmissions of the pri-  
25 mary transmissions of network stations and super-



1 stations that originate as digital signals, including  
2 issues that relate to the application of the unserved  
3 household limitations under section 119 of title 17,  
4 United States Code, and to the determination of roy-  
5 alties of cable systems and satellite carriers.

6 **SEC. 110. ADDITIONAL STUDY.**

7 No later than December 31, 2005, the Register of  
8 Copyrights shall report to the Committee on the Judiciary  
9 of the House of Representatives and the Committee on  
10 the Judiciary of the Senate the Register's findings and  
11 recommendations on the following:

12 (1) The extent to which the unserved household  
13 limitation for network stations contained in section  
14 119 of title 17, United States Code, has operated ef-  
15 ficiently and effectively and has forwarded the goal  
16 of title 17, United States Code, to protect copyright  
17 owners of over-the-air television programming, in-  
18 cluding what amendments, if any, are necessary to  
19 effectively identify the application of the limitation  
20 to individual households to receive secondary trans-  
21 missions of primary digital transmissions of network  
22 stations.

23 (2) The extent to which secondary trans-  
24 missions of primary transmissions of network sta-  
25 tions and superstations under section 119 of title



1 17, United States Code, harm copyright owners of  
2 broadcast programming throughout the United  
3 States and the effect, if any, of the statutory license  
4 under section 122 of title 17, United States Code,  
5 in reducing such harm.

6 **SEC. 111. SPECIAL RULES.**

7 (a) RESTRICTIONS ON TRANSMISSION OF DISTANT  
8 TELEVISION STATIONS IN AREAS OF ALASKA WHERE  
9 LOCAL-INTO-LOCAL SERVICE IS AVAILABLE.—Section  
10 119(a) of title 17, United States Code, is amended by add-  
11 ing at the end thereof the following:

12 “(16) RESTRICTED TRANSMISSION OF OUT-OF-  
13 STATE DISTANT NETWORK SIGNALS INTO CERTAIN  
14 MARKETS.—

15 “(A) OUT-OF-STATE NETWORK AFFILI-  
16 ATES.—Notwithstanding any other provision of  
17 this title, the statutory license in this subsection  
18 and subsection (b) shall not apply to any sec-  
19 ondary transmission of the primary trans-  
20 mission of a network station located outside of  
21 the State of Alaska to any subscriber in that  
22 State to whom the secondary transmission of  
23 the primary transmission of a television station  
24 located in that State is made available by the  
25 satellite carrier pursuant to section 122.





1           “(B) EXCEPTION.—The limitation in sub-  
2           paragraph (A) shall not apply to the secondary  
3           transmission of the primary transmission of a  
4           digital signal of a network station located out-  
5           side of the State of Alaska if at the time that  
6           the secondary transmission is made, no tele-  
7           vision station licensed to a community in the  
8           State and affiliated with the same network  
9           makes primary transmissions of a digital sig-  
10          nal.”.

11          (b) EXTRA DMA DEEMED LOCAL.—Section  
12 122(j)(2) of title 17, United States Code, is amended by  
13 adding at the end thereof the following:

14           “(D) CERTAIN AREAS OUTSIDE OF ANY  
15           DESIGNATED MARKET AREA.—Any census area,  
16           borough, or other area in the State of Alaska  
17           that is outside of a designated market area, as  
18           determined by Nielsen Media Research, shall be  
19           deemed to be part of one of the local markets  
20           in the State of Alaska. A satellite carrier may  
21           determine which local market in the State of  
22           Alaska will be deemed to be the relevant local  
23           market in connection with each subscriber in  
24           such census area, borough, or other area.”.



1 **SEC. 112. TECHNICAL AMENDMENT.**

2 Section 803(b)(1)(A)(i)(V) of title 17, United States  
3 Code, as amended by the Copyright Royalty and Distribu-  
4 tion Reform Act of 2004, is amended by inserting before  
5 the period at the end the following: “, except that in the  
6 case of proceedings under section 111 that are scheduled  
7 to commence in 2005, such notice may not be published,  
8 ~~and such proceedings may not be commenced, before Jan-~~  
9 ~~uary 1, 2006”.~~

10 **TITLE II—FEDERAL COMMU-**  
11 **NICATIONS COMMISSION OP-**  
12 **ERATIONS**

13 **SEC. 201. EXTENSION OF RETRANSMISSION CONSENT EX-**  
14 **EMPTION.**

15 Section 325(b)(2)(C) of the Communications Act of  
16 1934 (47 U.S.C. 325(b)(2)(C)) is amended by striking  
17 “December 31, 2004” and inserting “December 31,  
18 2009”.

19 **SEC. 202. CABLE/SATELLITE COMPARABILITY.**

20 (a) AMENDMENT.—Part I of title III of the Commu-  
21 nications Act of 1934 is amended by inserting after sec-  
22 tion 339 (47 U.S.C. 339) the following new section:

23 **“SEC. 340. SIGNIFICANTLY VIEWED SIGNALS PERMITTED**  
24 **TO BE CARRIED.**

25 “(a) SIGNIFICANTLY VIEWED STATIONS.—In addi-  
26 tion to the broadcast signals that subscribers may receive



1 under section 338 and 339, a satellite carrier is also au-  
2 thorized to retransmit to a subscriber located in a commu-  
3 nity the signal of any station located outside the local mar-  
4 ket in which such subscriber is located, to the extent such  
5 signal—

6 “(1) has, before the date of enactment of the  
7 Satellite Home Viewer Extension and Reauthoriza-  
8 tion Act of 2004, been determined by the Federal  
9 Communications Commission to be a signal a cable  
10 operator may carry as significantly viewed in such  
11 community, except to the extent that such signal is  
12 prevented from being carried by a cable system in  
13 such community under the Commission’s network  
14 nonduplication and syndicated exclusivity rules; or

15 “(2) is, after such date of enactment, deter-  
16 mined by the Commission to be significantly viewed  
17 in such community in accordance with the same  
18 standards and procedures concerning shares of view-  
19 ing hours and audience surveys as are applicable  
20 under the rules, regulations, and authorizations of  
21 the Commission to determining with respect to a  
22 cable system whether signals are significantly viewed  
23 in a community.

24 “(b) LIMITATIONS.—



1           “(1) ANALOG SERVICE LIMITED TO SUB-  
2       SCRIBERS TAKING LOCAL-INTO-LOCAL SERVICE.—

3       With respect to a signal that originates as an analog  
4       signal of a network station, this section shall apply  
5       only to retransmissions to subscribers of a satellite  
6       carrier who receive retransmissions of a signal that  
7       originates as an analog signal of a local network sta-  
8       tion from that satellite carrier pursuant to section  
9       338.

10           “(2) DIGITAL SERVICE LIMITATIONS.—With re-  
11       spect to a signal that originates as a digital signal  
12       of a network station, this section shall apply only  
13       if—

14           “(A) the subscriber receives from the sat-  
15       ellite carrier pursuant to section 338 the re-  
16       transmission of the digital signal of a network  
17       station in the subscriber’s local market that is  
18       affiliated with the same television network; and

19           “(B) either—

20           “(i) the retransmission of the local  
21       network station occupies at least the equiv-  
22       alent bandwidth as the digital signal re-  
23       transmitted pursuant to this section; or

24           “(ii) the retransmission of the local  
25       network station is comprised of the entire



1 bandwidth of the digital signal broadcast  
2 by such local network station.

3 “(3) LIMITATION NOT APPLICABLE WHERE NO  
4 NETWORK AFFILIATES.—The limitations in para-  
5 graphs (1) and (2) shall not prohibit a retrans-  
6 mission under this section to a subscriber located in  
7 a local market in which there are no network sta-  
8 tions affiliated with the same television network as  
9 the station whose signal is being retransmitted pur-  
10 suant to this section.

11 “(4) AUTHORITY TO GRANT STATION-SPECIFIC  
12 WAIVERS.—Paragraphs (1) and (2) shall not pro-  
13 hibit a retransmission of a network station to a sub-  
14 scriber if and to the extent that the network station  
15 in the local market in which the subscriber is lo-  
16 cated, and that is affiliated with the same television  
17 network, has privately negotiated and affirmatively  
18 granted a waiver from the requirements of para-  
19 graph (1) and (2) to such satellite carrier with re-  
20 spect to retransmission of the significantly viewed  
21 station to such subscriber.

22 “(c) PUBLICATION AND MODIFICATIONS OF LISTS;  
23 REGULATIONS.—

24 “(1) IN GENERAL.—The Commission shall—



1 “(A) within 60 days after the date of en-  
2 actment of the Satellite Home Viewer Exten-  
3 sion and Reauthorization Act of 2004—

4 “(i) publish a list of the stations that  
5 are eligible for retransmission under sub-  
6 section (a) (1) and the communities in  
7 which such stations are eligible for such re-  
8 transmission; and

9 “(ii) commence a rulemaking pro-  
10 ceeding to implement this section by publi-  
11 cation of a notice of proposed rulemaking;

12 “(B) adopt rules pursuant to such rule-  
13 making within one year after such date of en-  
14 actment.

15 “(2) PUBLIC AVAILABILITY OF LIST.—The  
16 Commission shall make readily available to the pub-  
17 lic in electronic form, on the Internet website of the  
18 Commission or other comparable facility, a list of  
19 the stations that are eligible for retransmission  
20 under subsection (a) and the communities in which  
21 such stations are eligible for such retransmission.  
22 The Commission shall update such list within 10  
23 business days after the date on which the Commis-  
24 sion issues an order making any modification of  
25 such stations and communities.



1           “(3) MODIFICATIONS.—In addition to cable op-  
2           erators and television broadcast station licensees, the  
3           Commission shall permit a satellite carrier to peti-  
4           tion for decisions and orders—

5                   “(A) by which stations may be added to  
6           those that are eligible for retransmission under  
7           subsection (a), and by which communities may  
8           be added in which such stations are eligible for  
9           such retransmission; and

10                   “(B) by which network nonduplication or  
11           syndicated exclusivity regulations are applied to  
12           the retransmission in accordance with sub-  
13           section (e).

14           “(d) EFFECT ON OTHER OBLIGATIONS AND  
15           RIGHTS.—

16                   “(1) NO EFFECT ON CARRIAGE OBLIGATIONS.—  
17           Carriage of a signal under this section is not manda-  
18           tory, and any right of a station licensee to have the  
19           signal of such station carried under section 338 is  
20           not affected by the eligibility of such station to be  
21           carried under this section.

22                   “(2) RETRANSMISSION CONSENT RIGHTS NOT  
23           AFFECTED.—The eligibility of the signal of a station  
24           to be carried under this section does not affect any  
25           right of the licensee of such station to grant (or



1 withhold) retransmission consent under section  
2 325(b)(1).

3 “(e) NETWORK NONDUPLICATION AND SYNDICATED  
4 EXCLUSIVITY.—

5 “(1) NOT APPLICABLE EXCEPT AS PROVIDED  
6 BY COMMISSION REGULATIONS.—Signals eligible to  
7 be carried under this section are not subject to the  
8 Commission’s regulations concerning network non-  
9 duplication or syndicated exclusivity unless, pursu-  
10 ant to regulations adopted by the Commission, the  
11 Commission determines to permit network non-  
12 duplication or syndicated exclusivity to apply within  
13 the appropriate zone of protection.

14 “(2) LIMITATION.—Nothing in this subsection  
15 or Commission regulations shall permit the applica-  
16 tion of network nonduplication or syndicated exclu-  
17 sivity regulations to the retransmission of distant  
18 signals of network stations that are carried by a sat-  
19 ellite carrier pursuant to a statutory license under  
20 section 119(a)(2)(A) or (B) of title 17, United  
21 States Code, with respect to persons who reside in  
22 unserved households, under 119(a)(4)(A), or under  
23 section 119(a)(12), of such title.

24 “(f) ENFORCEMENT.—





1           “(1) ORDERS AND DAMAGES.—Upon complaint,  
2           the Commission shall issue a cease and desist order  
3           to any satellite carrier found to have violated this  
4           section in carrying any television broadcast station.  
5           Such order may, if a complaining station requests  
6           damages—

7                   “(A) provide for the award of damages to  
8                   a complaining station that establishes that the  
9                   violation was committed in bad faith, in an  
10                  amount up to \$50 per subscriber, per station,  
11                  per day of the violation; and

12                  “(B) provide for the award of damages to  
13                  a prevailing satellite carrier if the Commission  
14                  determines that the complaint was frivolous, in  
15                  an amount up to \$50 per subscriber alleged to  
16                  be in violation, per station alleged, per day of  
17                  the alleged violation.

18           “(2) COMMISSION DECISION.—The Commission  
19           shall issue a final determination resolving a com-  
20           plaint brought under this subsection not later than  
21           180 days after the submission of a complaint under  
22           this subsection. The Commission may hear witnesses  
23           if it clearly appears, based on written filings by the  
24           parties, that there is a genuine dispute about mate-  
25           rial facts. Except as provided in the preceding sen-



1       tence, the Commission may issue a final ruling  
2       based on written filings by the parties.

3           “(3) REMEDIES IN ADDITION.—The remedies  
4       under this subsection are in addition to any rem-  
5       edies available under title 17, United States Code.

6           “(4) NO EFFECT ON COPYRIGHT PRO-  
7       CEEDINGS.—Any determination, action, or failure to  
8       act of the Commission under this subsection shall  
9       have no effect on any proceeding under title 17,  
10      United States Code, and shall not be introduced in  
11      evidence in any proceeding under that title. In no in-  
12      stance shall a Commission enforcement proceeding  
13      under this subsection be required as a predicate to  
14      the pursuit of a remedy available under title 17.

15          “(g) NOTICES CONCERNING SIGNIFICANTLY VIEWED  
16      STATIONS.—Each satellite carrier that proposes to com-  
17      mence the retransmission of a station pursuant to this sec-  
18      tion in any local market shall—

19           “(1) not less than 60 days before commencing  
20      such retransmission, provide a written notice to any  
21      television broadcast station in such local market of  
22      such proposal; and

23           “(2) designate on such carrier’s website all sig-  
24      nificantly viewed signals carried pursuant to section



1 340 and the communities in which the signals are  
2 carried.

3 “(h) ADDITIONAL CORRESPONDING CHANGES IN  
4 REGULATIONS.—

5 “(1) COMMUNITY-BY-COMMUNITY ELEC-  
6 TIONS.—The Commission shall, no later than Octo-  
7 ber 30, 2005, revise section 76.66 of its regulations  
8 (47 CFR 76.66), concerning satellite broadcast sig-  
9 nal carriage, to permit (at the next cycle of elections  
10 under section 325) a television broadcast station  
11 that is located in a local market into which a sat-  
12 ellite carrier retransmits a television broadcast sta-  
13 tion pursuant to section 338, to elect, with respect  
14 to such satellite carrier, between retransmission con-  
15 sent pursuant to such section 325 and mandatory  
16 carriage pursuant to section 338 separately for each  
17 county within such station’s local market, if—

18 “(A) the satellite carrier has notified the  
19 station, pursuant to paragraph (3), that it in-  
20 tends to carry another affiliate of the same net-  
21 work pursuant to this section during the rel-  
22 evant election period in the station’s local mar-  
23 ket; or

24 “(B) on the date notification under para-  
25 graph (3) was due, the satellite carrier was re-



1 transmitting into the station's local market pur-  
2 suant to this section an affiliate of the same tel-  
3 evision network.

4 “(2) UNIFIED NEGOTIATIONS.—In revising its  
5 regulations as required by paragraph (1), the Com-  
6 mission shall provide that any such station shall con-  
7 duct a unified negotiation for the entire portion of  
8 its local market for which retransmission consent is  
9 elected.

10 “(3) ADDITIONAL PROVISIONS.—The Commis-  
11 sion shall, no later than October 30, 2005, revise its  
12 regulations to provide the following:

13 “(A) NOTIFICATIONS BY SATELLITE CAR-  
14 RIER.—A satellite carrier's retransmission of  
15 television broadcast stations pursuant to this  
16 section shall be subject to the following limita-  
17 tions:

18 “(i) In any local market in which the  
19 satellite carrier provides service pursuant  
20 to section 338 on the date of enactment of  
21 the Satellite Home Viewer Extension and  
22 Reauthorization Act of 2004, the carrier  
23 may notify a television broadcast station in  
24 that market, at least 60 days prior to any  
25 date on which the station must thereafter



1 make an election under section 76.66 of  
2 the Commission's regulations (47 CFR  
3 76.66), of—

4 “(I) each affiliate of the same  
5 television network that the carrier re-  
6 serves the right to retransmit into  
7 that station's local market pursuant  
8 to this section during the next election  
9 cycle under such section of such regu-  
10 lations; and

11 “(II) for each such affiliate, the  
12 communities into which the satellite  
13 carrier reserves the right to make  
14 such retransmissions.

15 “(ii) In any local market in which the  
16 satellite carrier commences service pursu-  
17 ant to section 338 after the date of enact-  
18 ment of the Satellite Home Viewer Exten-  
19 sion and Reauthorization Act of 2004, the  
20 carrier may notify a station in that mar-  
21 ket, at least 60 days prior to the introduc-  
22 tion of such service in that market, and  
23 thereafter at least 60 days prior to any  
24 date on which the station must thereafter  
25 make an election under section 76.66 of



1 the Commission's regulations (47 CFR  
2 76.66), of each affiliate of the same tele-  
3 vision network that the carrier reserves the  
4 right to retransmit into that station's local  
5 market during the next election cycle  
6 under such section of such regulations.

7 “(iii) Beginning with the 2005 elec-  
8 tion cycle, a satellite carrier may only re-  
9 transmit pursuant to this section during  
10 the pertinent election period a signal—

11 “(I) as to which it has provided  
12 the notifications set forth in clauses  
13 (i) and (ii); or

14 “(II) that it was retransmitting  
15 into the local market under this sec-  
16 tion as of the date such notifications  
17 were due.

18 “(B) HARMONIZATION OF ELECTIONS AND  
19 RETRANSMISSION CONSENT AGREEMENTS.—If a  
20 satellite carrier notifies a television broadcast  
21 station that it reserves the right to retransmit  
22 an affiliate of the same television network dur-  
23 ing the next election cycle pursuant to this sec-  
24 tion, the station may choose between retrans-  
25 mission consent and mandatory carriage for



1 any portion of the 3-year election cycle that is  
2 not covered by an existing retransmission con-  
3 sent agreement.

4 “(i) DEFINITIONS.—As used in this section:

5 “(1) LOCAL MARKET; SATELLITE CARRIER;  
6 SUBSCRIBER; TELEVISION BROADCAST STATION.—  
7 The terms ‘local market’, ‘satellite carrier’, ‘sub-  
8 scriber’, and ‘television broadcast station’ have the  
9 meanings given such terms in section 338(k).

10 “(2) NETWORK STATION; TELEVISION NET-  
11 WORK.—The terms ‘network station’ and ‘television  
12 network’ have the meanings given such terms in sec-  
13 tion 339(d).

14 “(3) COMMUNITY.—The term ‘community’  
15 means—

16 “(A) a county or a cable community, as de-  
17 termined under the rules, regulations, and au-  
18 thorizations of the Commission applicable to de-  
19 termining with respect to a cable system wheth-  
20 er signals are significantly viewed; or

21 “(B) a satellite community, as determined  
22 under such rules, regulations, and authoriza-  
23 tions (or revisions thereof) as the Commission  
24 may prescribe in implementing the require-  
25 ments of this section.



1           “(4) BANDWIDTH.—The terms ‘equivalent  
2       bandwidth’ and ‘entire bandwidth’ shall be defined  
3       by the Commission by regulation, except that this  
4       paragraph shall not be construed—

5           “(A) to prevent a satellite operator from  
6       using compression technology;

7           “(B) to require a satellite operator to use  
8       the identical bandwidth or bit rate as the local  
9       or distant broadcaster whose signal it is re-  
10      transmitting;

11          “(C) to require a satellite operator to use  
12      the identical bandwidth or bit rate for a local  
13      network station as it does for a distant network  
14      station;

15          “(D) to affect a satellite operator’s obliga-  
16      tions under subsection (a)(1); or

17          “(E) to affect the definitions of ‘program  
18      related’ and ‘primary video’.”.

19   **SEC. 203. CARRIAGE OF LOCAL STATIONS ON A SINGLE**  
20           **DISH.**

21      (a) AMENDMENTS.—Section 338 of the Communica-  
22      tions Act of 1934 (47 U.S.C. 338(d)) is amended—

23          (1) by redesignating subsections (g) and (h) as  
24      subsections (j) and (k), respectively; and





1           (2) by inserting after subsection (f) the fol-  
2       lowing new subsection:

3       “(g) CARRIAGE OF LOCAL STATIONS ON A SINGLE  
4       DISH.—

5           “(1) SINGLE DISH.—Each satellite carrier that  
6       retransmits the analog signals of local television  
7       broadcast stations in a local market shall retransmit  
8       such analog signals in such market by means of a  
9       single reception antenna and associated equipment.

10          “(2) EXCEPTION.—If the carrier retransmits  
11       signals in the digital television service, the carrier  
12       shall retransmit such digital signals in such market  
13       by means of a single reception antenna and associ-  
14       ated equipment, but such antenna and associated  
15       equipment may be separate from the single reception  
16       antenna and associated equipment used for analog  
17       television service signals.

18          “(3) EFFECTIVE DATE.—The requirements of  
19       paragraphs (1) and (2) of this subsection shall apply  
20       on and after 18 months after the date of enactment  
21       of the Satellite Home Viewer Extension and Reau-  
22       thorization Act of 2004.

23          “(4) NOTICE OF DISRUPTIONS.—A carrier that  
24       is providing signals of a local television broadcast  
25       station in a local market under this section on the



1 date of enactment of the Satellite Home Viewer Ex-  
2 tension and Reauthorization Act of 2004 shall, not  
3 later than 15 months after such date of enactment,  
4 provide to the licensees for such stations and the  
5 carrier's subscribers in such local market a notice  
6 that displays prominently and conspicuously a clear  
7 statement of—

8 “(A) any reallocation of signals between  
9 different reception antennas and associated  
10 equipment that the carrier intends to make in  
11 order to comply with the requirements of this  
12 subsection;

13 “(B) the need, if any, for subscribers to  
14 obtain an additional reception antenna and as-  
15 sociated equipment to receive such signals; and

16 “(C) any cessation of carriage or other ma-  
17 terial change in the carriage of signals as a con-  
18 sequence of the requirements of this para-  
19 graph.”.

20 (b) CONFORMING AMENDMENTS: COMMISSION EN-  
21 FORCEMENT OF SECTION; LOW POWER TELEVISION STA-  
22 TIONS.—

23 (1) Section 338(a) of such Act is amended by  
24 striking paragraphs (1) and (2) and inserting the  
25 following:



1           “(1) IN GENERAL.—Each satellite carrier pro-  
2       viding, under section 122 of title 17, United States  
3       Code, secondary transmissions to subscribers located  
4       within the local market of a television broadcast sta-  
5       tion of a primary transmission made by that station  
6       shall carry upon request the signals of all television  
7       broadcast stations located within that local market,  
8       subject to section 325(b).

9           “(2) REMEDIES FOR FAILURE TO CARRY.—In  
10      addition to the remedies available to television  
11      broadcast stations under section 501(f) of title 17,  
12      United States Code, the Commission may use the  
13      Commission’s authority under this Act to assure  
14      compliance with the obligations of this subsection,  
15      but in no instance shall a Commission enforcement  
16      proceeding be required as a predicate to the pursuit  
17      of a remedy available under such section 501(f).

18          “(3) LOW POWER STATION CARRIAGE OP-  
19      TIONAL.—No low power television station whose sig-  
20      nals are provided under section 119(a)(14) of title  
21      17, United States Code, shall be entitled to insist on  
22      carriage under this section, regardless of whether  
23      the satellite carrier provides secondary transmissions  
24      of the primary transmissions of other stations in the  
25      same local market pursuant to section 122 of such



1 title, nor shall any such carriage be considered in  
2 connection with the requirements of subsection (c) of  
3 this section.”.

4 (2) Section 338(c)(1) of such Act is amended  
5 by striking “subsection (a)” and inserting “sub-  
6 section (a)(1)”.

7 (3) Section 338(k) of such Act (as redesignated  
8 by subsection (a)(1)) is amended—

9 (A) by redesignating paragraphs (4)  
10 through (7) as paragraphs (5) through (8), re-  
11 spectively; and

12 (B) by inserting after paragraph (3) the  
13 following new paragraph:

14 “(4) LOW POWER TELEVISION STATION.—The  
15 term ‘low power television station’ means a low  
16 power television station as defined under section  
17 74.701(f) of title 47, Code of Federal Regulations,  
18 as in effect on June 1, 2004. For purposes of this  
19 paragraph, the term ‘low power television station’ in-  
20 cludes a low power television station that has been  
21 accorded primary status as a Class A television li-  
22 censee under section 73.6001(a) of title 47, Code of  
23 Federal Regulations.”.



1 **SEC. 204. REPLACEMENT OF DISTANT SIGNALS WITH**  
2 **LOCAL SIGNALS.**

3 (a) REPLACEMENT.—Section 339(a) of the Commu-  
4 nications Act of 1934 (47 U.S.C. 339(a)) is amended—

5 (1) in paragraph (1), by adding at the end the  
6 following new sentence: “Such two network stations  
7 may be comprised of both the analog signal and dig-  
8 ital signal of not more than two network stations.”;

9 (2) by redesignating paragraph (2) as para-  
10 graph (3);

11 (3) by inserting after paragraph (1) the fol-  
12 lowing new paragraph:

13 “(2) REPLACEMENT OF DISTANT SIGNALS WITH  
14 LOCAL SIGNALS.—Notwithstanding any other provi-  
15 sion of paragraph (1), the following rules shall apply  
16 after the date of enactment of the Satellite Home  
17 Viewer Extension and Reauthorization Act of 2004:

18 “(A) RULES FOR GRANDFATHERED SUB-  
19 SCRIBERS TO ANALOG SIGNALS.—

20 “(i) FOR THOSE RECEIVING DISTANT  
21 ANALOG SIGNALS.—In the case of a sub-  
22 scriber of a satellite carrier who is eligible  
23 to receive the analog signal of a network  
24 station solely by reason of section 119(e)  
25 of title 17, United States Code (in this  
26 subparagraph referred to as a ‘distant ana-



1 log signal'), and who, as of October 1,  
2 2004, is receiving the distant analog signal  
3 of that network station, the following shall  
4 apply:

5 “(I) In a case in which the sat-  
6 ellite carrier makes available to the  
7 subscriber the analog signal of a local  
8 network station affiliated with the  
9 same television network pursuant to  
10 section 338, the carrier may only pro-  
11 vide the secondary transmissions of  
12 the distant analog signal of a station  
13 affiliated with the same network to  
14 that subscriber—

15 “(aa) if, within 60 days  
16 after receiving the notice of the  
17 satellite carrier under section  
18 338(h)(1) of this Act, the sub-  
19 scriber elects to retain the dis-  
20 tant analog signal; but

21 “(bb) only until such time as  
22 the subscriber elects to receive  
23 such local analog signal.

24 “(II) Notwithstanding subclause  
25 (I), the carrier may not retransmit



1 the distant analog signal to any sub-  
2 scribe who is eligible to receive the  
3 analog signal of a network station  
4 solely by reason of section 119(e) of  
5 title 17, United States Code, unless  
6 such carrier, within 60 days after the  
7 date of the enactment of the Satellite  
8 Home Viewer Extension and Reau-  
9 thorization Act of 2004, submits to  
10 that television network the list and  
11 statement required by subparagraph  
12 (F)(i).

13 “(ii) FOR THOSE NOT RECEIVING DIS-  
14 TANT ANALOG SIGNALS.—In the case of  
15 any subscriber of a satellite carrier who is  
16 eligible to receive the distant analog signal  
17 of a network station solely by reason of  
18 section 119(e) of title 17, United States  
19 Code, and who did not receive a distant  
20 analog signal of a station affiliated with  
21 the same network on October 1, 2004, the  
22 carrier may not provide the secondary  
23 transmissions of the distant analog signal  
24 of a station affiliated with the same net-  
25 work to that subscriber.



1           “(B) RULES FOR OTHER SUBSCRIBERS TO  
2           ANALOG SIGNALS.—In the case of a subscriber  
3           of a satellite carrier who is eligible to receive  
4           the analog signal of a network station under  
5           this section (in this subparagraph referred to as  
6           a ‘distant analog signal’), other than sub-  
7           scribers to whom subparagraph (A) applies, the  
8           following shall apply:

9           “(i) In a case in which the satellite  
10          carrier makes available to that subscriber,  
11          on January 1, 2005, the analog signal of  
12          a local network station affiliated with the  
13          same television network pursuant to sec-  
14          tion 338, the carrier may only provide the  
15          secondary transmissions of the distant  
16          analog signal of a station affiliate with the  
17          same network to that subscriber if the sub-  
18          scriber’s satellite carrier, not later than  
19          March 1, 2005, submits to that television  
20          network the list and statement required by  
21          subparagraph (F)(i).

22          “(ii) In a case in which the satellite  
23          carrier does not make available to that  
24          subscriber, on January 1, 2005, the analog  
25          signal of a local network station pursuant





1 to section 338, the carrier may only pro-  
2 vide the secondary transmissions of the  
3 distant analog signal of a station affiliated  
4 with the same network to that subscriber  
5 if—

6 “(I) that subscriber seeks to sub-  
7 scribe to such distant analog signal  
8 before the date on which such carrier  
9 commences to carry pursuant to sec-  
10 tion 338 the analog signals of stations  
11 from the local market of such local  
12 network station; and

13 “(II) the satellite carrier, within  
14 60 days after such date, submits to  
15 each television network the list and  
16 statement required by subparagraph  
17 (F)(ii).

18 “(C) FUTURE APPLICABILITY.—A satellite  
19 carrier may not provide a distant analog signal  
20 (within the meaning of subparagraph (A) or  
21 (B)) to a person who—

22 “(i) is not a subscriber lawfully receiv-  
23 ing such secondary transmission as of the  
24 date of the enactment of the Satellite



1 Home Viewer Extension and Reauthoriza-  
2 tion Act of 2004; and

3 “(ii) at the time such person seeks to  
4 subscribe to receive such secondary trans-  
5 mission, resides in a local market where  
6 the satellite carrier makes available to that  
7 person the analog signal of a local network  
8 station affiliated with the same television  
9 network pursuant to section 338, and the  
10 retransmission of such signal by such car-  
11 rier can reach such subscriber.

12 “(D) SPECIAL RULES FOR DISTANT DIG-  
13 ITAL SIGNALS.—

14 “(i) ELIGIBILITY.—In the case of a  
15 subscriber of a satellite carrier who, with  
16 respect to a local network station—

17 “(I) is a subscriber whose house-  
18 hold is located outside the coverage  
19 area of the analog signal of such sta-  
20 tion as predicted by the model speci-  
21 fied in subsection (c)(3) of this section  
22 for the signal intensity required under  
23 section 73.683(a) of title 47 of the  
24 Code of Federal Regulations, or a suc-  
25 cessor regulation;



1                   “(II) is in an unserved household  
2                   as determined under section  
3                   119(d)(1)(A) of title 17, United  
4                   States Code; or

5                   “(III) is, after the date on which  
6                   the conditions required by clause (vii)  
7                   are met with respect to such station,  
8                   determined under clause (vi) of this  
9                   subparagraph to be unable to receive  
10                  a digital signal of such local network  
11                  station that exceeds the signal inten-  
12                  sity standard specified in such clause;  
13                  such subscriber is eligible to receive the  
14                  digital signal of a distant network station  
15                  affiliated with the same network under this  
16                  section (in this subparagraph referred to  
17                  as a ‘distant digital signal’) subject to the  
18                  provisions of this subparagraph.

19                  “(ii) PRE-ENACTMENT DISTANT DIG-  
20                  ITAL SIGNAL SUBSCRIBERS.—Any eligible  
21                  subscriber under this subparagraph who is  
22                  a lawful subscriber to such a distant dig-  
23                  ital signal as of the date of enactment of  
24                  the Satellite Home Viewer Extension and  
25                  Reauthorization Act of 2004 may continue



1 to receive such distant digital signal,  
2 whether or not such subscriber elects to  
3 subscribe to local digital signals.

4 “(iii) LOCAL-TO-LOCAL ANALOG MAR-  
5 KETS.—In a case in which the satellite car-  
6 rier makes available to an eligible sub-  
7 scriber under this subparagraph the analog  
8 signal of a local network station pursuant  
9 to section 338, the carrier may only pro-  
10 vide the distant digital signal of a station  
11 affiliated with the same network to that  
12 subscriber if—

13 “(I) in the case of any local mar-  
14 ket in the 48 contiguous States of the  
15 United States, the distant digital sig-  
16 nal is the secondary transmission of a  
17 station whose prime time network pro-  
18 gramming is generally broadcast si-  
19 multaneously with, or later than, the  
20 prime time network programming of  
21 the affiliate of the same network in  
22 the local market;

23 “(II) in any local market, the re-  
24 transmission of the distant digital sig-  
25 nal of the distant station occupies at



1 least the equivalent bandwidth (as  
2 such term is defined by the Commis-  
3 sion under section 340(h)(4)) as the  
4 digital signal broadcast by such sta-  
5 tion; and

6 “(III) the subscriber subscribes  
7 to the analog signal of such local net-  
8 work station within 60 days after  
9 such signal is made available by the  
10 satellite carrier, and adds to or re-  
11 places such analog signal with the dig-  
12 ital signal from such local network  
13 station within 60 days after such sig-  
14 nal is made available by the satellite  
15 carrier, except that such distant dig-  
16 ital signal may continue to be pro-  
17 vided to a subscriber who cannot be  
18 reached by the satellite transmission  
19 of the local digital signal.

20 “(iv) LOCAL-TO-LOCAL DIGITAL MAR-  
21 KETS.—After the date on which a satellite  
22 carrier makes available the digital signal of  
23 a local network station, the carrier may  
24 not offer the distant digital signal of a net-  
25 work station affiliated with the same tele-



1 vision network to any new subscriber to  
2 such distant digital signal after such date,  
3 except that such distant digital signal may  
4 be provided to a new subscriber who can-  
5 not be reached by the satellite transmission  
6 of the local digital signal.

7 “(v) NON-LOCAL-TO-LOCAL MAR-  
8 KETS.—After the date of enactment of the  
9 Satellite Home Viewer Extension and Re-  
10 authorization Act of 2004, if the satellite  
11 carrier does not make available the digital  
12 signal of a local network station in a local  
13 market, the satellite carrier may offer a  
14 new subscriber after such date who is eligi-  
15 ble under this subparagraph a distant dig-  
16 ital signal from a station affiliated with the  
17 same network and, in the case of any local  
18 market in the 48 contiguous States of the  
19 United States, whose prime time network  
20 programming is generally broadcast simul-  
21 taneously with, or later than, the prime  
22 time network programming of the affiliate  
23 of the same network in the local market,  
24 except that—



1                   “(I) such carrier may continue to  
2                   provide such distant digital signal to  
3                   such a subscriber after the date on  
4                   which the carrier makes available the  
5                   digital signal of a local network sta-  
6                   tion affiliated with such network only  
7                   if such subscriber subscribes to the  
8                   digital signal from such local network  
9                   station; and

10                   “(II) the limitation contained in  
11                   subclause (I) of this clause shall not  
12                   apply to a subscriber that cannot be  
13                   reached by the satellite transmission  
14                   of the local digital signal.

15                   “(vi) SIGNAL TESTING FOR DIGITAL  
16                   SIGNALS.—

17                   “(I) A subscriber shall be eligible  
18                   for a distant digital signal under  
19                   clause (i)(~~II~~) if such subscriber is de-  
20                   termined, based on a test conducted  
21                   in accordance with section 73.686(d)  
22                   of title 47, Code of Federal Regula-  
23                   tions, or any successor regulation, not  
24                   to be able to receive a signal that ex-  
25                   ceeds the signal intensity standard in

III



1 section 73.622(e)(1) of title 47, Code  
2 of Federal Regulations, as in effect on  
3 the date of enactment of the Satellite  
4 Home Viewer Extension and Reau-  
5 thorization Act of 2004.

6 “(II) Such test shall be con-  
7 ducted, upon written request for a  
8 digital signal strength test by the sub-  
9 scriber to the satellite carrier, within  
10 30 days after the date the subscriber  
11 submits such request for the test.  
12 Such test shall be conducted by a  
13 qualified and independent person se-  
14 lected by the satellite carrier and the  
15 network station or stations, or who  
16 has been previously approved by the  
17 satellite carrier and by each affected  
18 network station but not previously  
19 disapproved. A tester may not be so  
20 disapproved for a test after the tester  
21 has commenced such test.

22 “(III) Unless the satellite carrier  
23 and the network station or stations  
24 otherwise agree, the costs of con-





1 ducting the test shall be borne as fol-  
2 lows:

3 “(aa) If the subscriber is not  
4 eligible for a distant digital sig-  
5 nal under clause (i)(I) of this  
6 subparagraph (by reason of being  
7 outside of the coverage area of  
8 the analog signal), the satellite  
9 carrier may request the station  
10 licensee for a waiver.

11 “(bb) If the licensee agrees  
12 to a waiver, or fails to respond to  
13 a waiver request within 30 days,  
14 the subscriber may receive such  
15 distant digital signal.

16 “(cc) If the licensee refuses  
17 to grant a waiver, the subscriber  
18 may request the satellite carrier  
19 to conduct the test.

20 “(dd) If the satellite carrier  
21 requests the test and—

22 “(AA) the station’s sig-  
23 nal is determined to exceed  
24 such signal intensity stand-  
25 ard, the costs of the test



1 shall be borne by the sat-  
2 ellite carrier;

3 “(BB) the station’s sig-  
4 nal is determined to not ex-  
5 ceed such signal intensity  
6 standard, the costs of the  
7 test shall be borne by the li-  
8 censee.

9 “(ee) If the satellite carrier  
10 does not request the test, or fails  
11 to respond within 30 days, the  
12 subscriber may request the test  
13 be conducted under the super-  
14 vision of the carrier, and the  
15 costs of the test shall be borne by  
16 the subscriber in accordance with  
17 regulations prescribed by the  
18 Commission. Such regulations  
19 shall also require the carrier to  
20 notify the subscriber of the typ-  
21 ical costs of such test.

22 “(vii) TRIGGER EVENTS FOR USE OF  
23 TESTING.—A subscriber shall not be eligi-  
24 ble for a distant digital signal under clause



(i)(II) pursuant to a test conducted under  
clause (vii) until—

“(I) in the case of a subscriber  
whose household is located within the  
area predicted to be served (by the  
predictive model for analog signals  
under subsection (b)(3) of this sec-  
tion) by the signal of a local network  
station and who is seeking a distant  
digital signal of a station affiliated  
with the same network as that local  
network station—

“(aa) April 30, 2006, if such  
local network station is within  
the top 100 television markets  
and—

“(AA) has received a  
tentative digital television  
service channel designation  
that is the same as such sta-  
tion’s current digital tele-  
vision service channel; or

“(BB) has been found  
by the Commission to have



1                   lost interference protection;  
2                   or

3                   “(bb) July 15, 2007, for any  
4                   other local network stations,  
5                   other than translator stations li-  
6                   censed to broadcast on the date  
7                   of enactment of the Satellite  
8                   Home Viewer Extension and Re-  
9                   authorization Act of 2004; or

10                  “(II) in the case of a translator  
11                  station, one year after the date on  
12                  which the Commission completes all  
13                  actions necessary for the allocation  
14                  and assignment of digital television li-  
15                  censes to television translator stations.

16                  “(viii) TESTING WAIVERS.—Upon re-  
17                  quest by a local network station, the Com-  
18                  mission may grant a waiver with respect to  
19                  such station to the beginning of testing  
20                  under clause (vii), and prohibit subscribers  
21                  from receiving digital signal strength test-  
22                  ing with respect to such station. Such a re-  
23                  quest shall be filed not less than 5 months  
24                  prior to the implementation deadline speci-  
25                  fied in such clause, and the Commission



1                   “(VI) no satellite carrier is pro-  
2                   viding the retransmission of the ana-  
3                   log signals of local network stations  
4                   under section 338 in the local market.  
5                   Under no circumstances may such a waiver  
6                   be based upon financial exigency.

7                   “(ix) SPECIAL WAIVER PROVISION FOR  
8                   TRANSLATORS.—Upon request by a tele-  
9                   vision translator station, the Commission  
10                  may grant, for not more than 3 years, a  
11                  waiver with respect to such station to the  
12                  beginning of testing under clause (vii), and  
13                  prohibit subscribers from receiving digital  
14                  signal strength testing with respect to such  
15                  station, if the Commission determines that  
16                  the translator station is not broadcasting a  
17                  digital signal due to one or more of the fol-  
18                  lowing:

19                  “(I) frequent occurrence of in-  
20                  clement weather; or

21                  “(II) mountainous terrain at the  
22                  transmitter tower location.

23                  “(x) SAVINGS PROVISION.—Nothing in  
24                  this subparagraph shall be construed to af-



1           fect a satellite carrier's obligations under  
2           section 338.

3           “(xi) DEFINITION.—For purposes of  
4           clause (viii), the term ‘emergency response  
5           providers’ means Federal, State, or local  
6           governmental and nongovernmental emer-  
7           gency public safety, law enforcement, fire,  
8           emergency response, emergency medical  
9           (including hospital emergency facilities),  
10          and related personnel, organizations, agen-  
11          cies, or authorities.

12          “(E) AUTHORITY TO GRANT STATION-SPE-  
13          CIFIC WAIVERS.—This paragraph shall not pro-  
14          hibit a retransmission of a distant analog signal  
15          or distant digital signal (within the meaning of  
16          subparagraph (A), (B), or (D)) of any distant  
17          network station to any subscriber to whom the  
18          signal of a local network station affiliated with  
19          the same network is available, if and to the ex-  
20          tent that such local network station has affirm-  
21          atively granted a waiver from the requirements  
22          of this paragraph to such satellite carrier with  
23          respect to retransmission of such distant net-  
24          work station to such subscriber.



1                   “(F) NOTICES TO NETWORKS OF DISTANT  
2                   SIGNAL SUBSCRIBERS.—

3                   “(i) Within 60 days after the date of  
4                   enactment of the Satellite Home Viewer  
5                   Extension and Reauthorization Act of  
6                   2004, each satellite carrier that provides a  
7                   distant signal of a network station to a  
8                   subscriber pursuant to subparagraph (A)  
9                   or (B)(i) of this paragraph shall submit to  
10                  each network—

11                  “(I) a list, aggregated by des-  
12                  ignated market area, identifying each  
13                  subscriber provided such a signal by—

14                         “(aa) name;

15                         “(bb) address (street or  
16                         rural route number, city, State,  
17                         and zip code); and

18                         “(cc) the distant network  
19                         signal or signals received; and

20                  “(II) a statement that, to the  
21                  best of the carrier’s knowledge and  
22                  belief after having made diligent and  
23                  good faith inquiries, the subscriber is  
24                  qualified under the existing law to re-  
25                  ceive the distant network signal or



1 signals pursuant to subparagraph (A)  
2 or (B)(i) of this paragraph.

3 “(ii) Within 60 days after the date a  
4 satellite carrier commences to carry pursu-  
5 ant to section 338 the signals of stations  
6 from a local market, such a satellite carrier  
7 that provides a distant signal of a network  
8 station to a subscriber pursuant to sub-  
9 paragraph (B)(ii) of this paragraph shall  
10 submit to each network—

11 “(I) a list identifying each sub-  
12 scriber in that local market provided  
13 such a signal by—

14 “(aa) name;

15 “(bb) address (street or  
16 rural route number, city, State,  
17 and zip code); and

18 “(cc) the distant network  
19 signal or signals received; and

20 “(II) a statement that, to the  
21 best of the carrier’s knowledge and  
22 belief after having made diligent and  
23 good faith inquiries, the subscriber is  
24 qualified under the existing law to re-  
25 ceive the distant network signal or





1 signals pursuant to subparagraph  
2 (B)(ii) of this paragraph.

3 “(G) OTHER PROVISIONS NOT AF-  
4 FECTED.—This paragraph shall not affect the  
5 eligibility of a subscriber to receive secondary  
6 transmissions under section 340 of this Act or  
7 as an unserved household included under sec-  
8 tion 119(a)(12) of title 17, United States Code.

9 “(H) AVAILABLE DEFINED.—For purposes  
10 of this paragraph, a satellite carrier makes  
11 available a local signal to a subscriber or person  
12 if the satellite carrier offers that local signal to  
13 other subscribers who reside in the same zip  
14 code as that subscriber or person.”; and

15 (4) in paragraph (3) (as redesignated by para-  
16 graph (2) of this subsection), by adding at the end  
17 the following: “, except that paragraph (2)(D) of  
18 this subsection, relating to the provision of distant  
19 digital signals, shall be enforceable under the provi-  
20 sions of section 340(f)”.

21 (b) STUDY OF DIGITAL STRENGTH TESTING PROCE-  
22 DURES.—Section 339(c) of such Act (47 U.S.C. 339(c))  
23 is amended by striking paragraph (1) and inserting the  
24 following:



1           “(1) STUDY OF DIGITAL STRENGTH TESTING  
2       PROCEDURES.—

3           “(A) STUDY REQUIRED.—Not later than  
4       one year after the date of the enactment of the  
5       Satellite Home Viewer Extension and Reauthor-  
6       ization Act of 2004, the Federal Communica-  
7       tions Commission shall complete an inquiry re-  
8       garding whether, for purposes of identifying if  
9       a household is unserved by an adequate digital  
10      signal under section 119(d)(10) of title 17,  
11      United States Code, the digital signal strength  
12      standard in section 73.622(e)(1) of title 47,  
13      Code of Federal Regulations, or the testing pro-  
14      cedures in section 73.686(d) of title 47, Code of  
15      Federal Regulations, such statutes or regula-  
16      tions should be revised to take into account the  
17      types of antennas that are available to con-  
18      sumers.

19           “(B) STUDY CONSIDERATIONS.—In con-  
20      ducting the study under this paragraph, the  
21      Commission shall consider whether—

22           “(i) to account for the fact that an  
23      antenna can be mounted on a roof or  
24      placed in a home and can be fixed or capa-  
25      ble of rotating;



1                   “(ii) section 73.686(d) of title 47,  
2                   Code of Federal Regulations, should be  
3                   amended to create different procedures for  
4                   determining if the requisite digital signal  
5                   strength is present than for determining if  
6                   the requisite analog signal strength is  
7                   present;

8                   “(iii) a standard should be used other  
9                   than the presence of a signal of a certain  
10                  strength to ensure that a household can re-  
11                  ceive a high-quality picture using antennas  
12                  of reasonable cost and ease of installation;

13                  “(iv) to develop a predictive method-  
14                  ology for determining whether a household  
15                  is unserved by an adequate digital signal  
16                  under section 119(d)(10) of title 17,  
17                  United States Code;

18                  “(v) there is a wide variation in the  
19                  ability of reasonably priced consumer dig-  
20                  ital television sets to receive over-the-air  
21                  signals, such that at a given signal  
22                  strength some may be able to display high-  
23                  quality pictures while others cannot,  
24                  whether such variation is related to the  
25                  price of the television set, and whether



1           such variation should be factored into set-  
2           ting a standard for determining whether a  
3           household is unserved by an adequate dig-  
4           ital signal; and

5           “(vi) to account for factors such as  
6           building loss, external interference sources,  
7           or undesired signals from both digital tele-  
8           vision and analog television stations using  
9           either the same or adjacent channels in  
10          nearby markets, foliage, and man-made  
11          clutter.

12          “(C) REPORT.—Not later than one year  
13          after the date of the enactment of the Satellite  
14          Home Viewer Extension and Reauthorization  
15          Act of 2004, the Federal Communications Com-  
16          mission shall submit to the Committee on En-  
17          ergy and Commerce of the House of Represent-  
18          atives and the Committee on Commerce,  
19          Science, and Transportation of the Senate a re-  
20          port containing—

21               “(i) the results of the study under this  
22               paragraph; and

23               “(ii) recommendations, if any, as to  
24               what changes should be made to Federal  
25               statutes or regulations.”.



1 **SEC. 205. ADDITIONAL NOTICES TO SUBSCRIBERS, NET-**  
2 **WORKS, AND STATIONS CONCERNING SIGNAL**  
3 **CARRIAGE.**

4 Section 338 of the Communications Act of 1934 (47  
5 U.S.C. 338) is further amended by inserting after sub-  
6 section (g) (as added by section 203) the following new  
7 subsection:

8 “(h) ADDITIONAL NOTICES TO SUBSCRIBERS, NET-  
9 WORKS, AND STATIONS CONCERNING SIGNAL CAR-  
10 RRIAGE.—

11 “(1) NOTICES TO AND ELECTIONS BY SUB-  
12 SCRIBERS CONCERNING GRANDFATHERED SIG-  
13 NALS.—Any carrier that provides a distant signal of  
14 a network station to a subscriber pursuant section  
15 339(a)(2)(A) shall—

16 “(A) within 60 days after the local signal  
17 of a network station of the same television net-  
18 work is available pursuant to section 338, or  
19 within 60 days after the date of enactment of  
20 the Satellite Home Viewer Extension and Reau-  
21 thorization Act of 2004, whichever is later, send  
22 a notice to the subscriber—

23 “(i) offering to substitute the local  
24 network signal for the duplicating distant  
25 network signal; and



1                   “(ii) informing the subscriber that, if  
2                   the subscriber fails to respond in 60 days,  
3                   the subscriber will lose the distant network  
4                   signal but will be permitted to subscribe to  
5                   the local network signal; and

6                   “(B) if the subscriber—

7                   “(i) elects to substitute such local net-  
8                   work signal within such 60 days, switch  
9                   such subscriber to such local network sig-  
10                  nal within 10 days after the end of such  
11                  60-day period; or

12                  “(ii) fails to respond within such 60  
13                  days, terminate the distant network signal  
14                  within 10 days after the end of such 60-  
15                  day period.

16                  “(2) NOTICE TO STATION LICENSEES OF COM-  
17                  MENCEMENT OF LOCAL-INTO-LOCAL SERVICE.—

18                  “(A) NOTICE REQUIRED.—Within 180  
19                  days after the date of enactment of the Satellite  
20                  Home Viewer Extension and Reauthorization  
21                  Act of 2004, the Commission shall revise the  
22                  regulations under this section relating to notice  
23                  to broadcast station licensees to comply with  
24                  the requirements of this paragraph.



1           “(B) CONTENTS OF COMMENCEMENT NO-  
2           TICE.—The notice required by such regulations  
3           shall inform each television broadcast station li-  
4           censee within any local market in which a sat-  
5           ellite carrier proposes to commence carriage of  
6           signals of stations from that market, not later  
7           than 60 days prior to the commencement of  
8           such carriage—

9           “(i) of the carrier’s intention to  
10          launch local-into-local service under this  
11          section in a local market, the identity of  
12          that local market, and the location of the  
13          carrier’s proposed local receive facility for  
14          that local market;

15          “(ii) of the right of such licensee to  
16          elect carriage under this section or grant  
17          retransmission consent under section  
18          325(b);

19          “(iii) that such licensee has 30 days  
20          from the date of the receipt of such notice  
21          to make such election; and

22          “(iv) that failure to make such elec-  
23          tion will result in the loss of the right to  
24          demand carriage under this section for the



1 remainder of the 3-year cycle of carriage  
2 under section 325.

3 “(C) TRANSMISSION OF NOTICES.—Such  
4 regulations shall require that each satellite car-  
5 rier shall transmit the notices required by such  
6 regulation via certified mail to the address for  
7 such television station licensee listed in the con-  
8 solidated database system maintained by the  
9 Commission.”.

10 **SEC. 206. PRIVACY RIGHTS OF SATELLITE SUBSCRIBERS.**

11 (a) AMENDMENT.—Section 338 of the Communica-  
12 tions Act of 1934 (47 U.S.C. 338) is further amended by  
13 inserting after subsection (h) (as added by section 205)  
14 the following new subsection:

15 “(i) PRIVACY RIGHTS OF SATELLITE SUB-  
16 SCRIBERS.—

17 “(1) NOTICE.—At the time of entering into an  
18 agreement to provide any satellite service or other  
19 service to a subscriber and at least once a year  
20 thereafter, a satellite carrier shall provide notice in  
21 the form of a separate, written statement to such  
22 subscriber which clearly and conspicuously informs  
23 the subscriber of—

24 “(A) the nature of personally identifiable  
25 information collected or to be collected with re-





1           spect to the subscriber and the nature of the  
2           use of such information;

3                 “(B) the nature, frequency, and purpose of  
4           any disclosure which may be made of such in-  
5           formation, including an identification of the  
6           types of persons to whom the disclosure may be  
7           made;

8                 “(C) the period during which such infor-  
9           mation will be maintained by the satellite car-  
10          rier;

11                “(D) the times and place at which the sub-  
12          scriber may have access to such information in  
13          accordance with paragraph (5); and

14                “(E) the limitations provided by this sec-  
15          tion with respect to the collection and disclosure  
16          of information by a satellite carrier and the  
17          right of the subscriber under paragraphs (7)  
18          and (9) to enforce such limitations.

19          In the case of subscribers who have entered into  
20          such an agreement before the effective date of this  
21          subsection, such notice shall be provided within 180  
22          days of such date and at least once a year there-  
23          after.

24                “(2) DEFINITIONS.—For purposes of this sub-  
25          section, other than paragraph (9)—



1           “(A) the term ‘personally identifiable infor-  
2 mation’ does not include any record of aggre-  
3 gate data which does not identify particular  
4 persons;

5           “(B) the term ‘other service’ includes any  
6 wire or radio communications service provided  
7 using any of the facilities of a satellite carrier  
8 that are used in the provision of satellite serv-  
9 ice; and

10           “(C) the term ‘satellite carrier’ includes, in  
11 addition to persons within the definition of sat-  
12 ellite carrier, any person who—

13           “(i) is owned or controlled by, or  
14 under common ownership or control with,  
15 a satellite carrier; and

16           “(ii) provides any wire or radio com-  
17 munications service.

18           “(3) PROHIBITIONS.—

19           “(A) CONSENT TO COLLECTION.—Except  
20 as provided in subparagraph (B), a satellite  
21 carrier shall not use any facilities used by the  
22 satellite carrier to collect personally identifiable  
23 information concerning any subscriber without  
24 the prior written or electronic consent of the  
25 subscriber concerned.



1           “(B) EXCEPTIONS.—A satellite carrier  
2           may use such facilities to collect such informa-  
3           tion in order to—

4                   “(i) obtain information necessary to  
5           render a satellite service or other service  
6           provided by the satellite carrier to the sub-  
7           scriber; or

8                   “(ii) detect unauthorized reception of  
9           satellite communications.

10          “(4) DISCLOSURE.—

11               “(A) CONSENT TO DISCLOSURE.—Except  
12           as provided in subparagraph (B), a satellite  
13           carrier shall not disclose personally identifiable  
14           information concerning any subscriber without  
15           the prior written or electronic consent of the  
16           subscriber concerned and shall take such ac-  
17           tions as are necessary to prevent unauthorized  
18           access to such information by a person other  
19           than the subscriber or satellite carrier.

20               “(B) EXCEPTIONS.—A satellite carrier  
21           may disclose such information if the disclosure  
22           is—

23                   “(i) necessary to render, or conduct a  
24           legitimate business activity related to, a



1 satellite service or other service provided  
2 by the satellite carrier to the subscriber;

3 “(ii) subject to paragraph (9), made  
4 pursuant to a court order authorizing such  
5 disclosure, if the subscriber is notified of  
6 such order by the person to whom the  
7 order is directed;

8 “(iii) a disclosure of the names and  
9 addresses of subscribers to any satellite  
10 service or other service, if—

11 “(I) the satellite carrier has pro-  
12 vided the subscriber the opportunity  
13 to prohibit or limit such disclosure;  
14 and

15 “(II) the disclosure does not re-  
16 veal, directly or indirectly, the—

17 “(aa) extent of any viewing  
18 or other use by the subscriber of  
19 a satellite service or other service  
20 provided by the satellite carrier;  
21 or

22 “(bb) the nature of any  
23 transaction made by the sub-  
24 scriber over any facilities used by  
25 the satellite carrier; or



1                   “(iv) to a government entity as au-  
2                   thorized under chapters 119, 121, or 206  
3                   of title 18, United States Code, except that  
4                   such disclosure shall not include records  
5                   revealing satellite subscriber selection of  
6                   video programming from a satellite carrier.

7                   “(5) ACCESS BY SUBSCRIBER.—A satellite sub-  
8                   scriber shall be provided access to all personally  
9                   identifiable information regarding that subscriber  
10                  which is collected and maintained by a satellite car-  
11                  rier. Such information shall be made available to the  
12                  subscriber at reasonable times and at a convenient  
13                  place designated by such satellite carrier. A satellite  
14                  subscriber shall be provided reasonable opportunity  
15                  to correct any error in such information.

16                  “(6) DESTRUCTION OF INFORMATION.—A sat-  
17                  ellite carrier shall destroy personally identifiable in-  
18                  formation if the information is no longer necessary  
19                  for the purpose for which it was collected and there  
20                  are no pending requests or orders for access to such  
21                  information under paragraph (5) or pursuant to a  
22                  court order.

23                  “(7) PENALTIES.—Any person aggrieved by  
24                  any act of a satellite carrier in violation of this sec-



1 criminal activity and that the information  
2 sought would be material evidence in the case;  
3 and

4 “(B) the subject of the information is af-  
5 farded the opportunity to appear and contest  
6 such entity’s claim.”.

7 (b) EFFECTIVE DATE.—Section 338(i) of the Com-  
8 munications Act of 1934 (47 U.S.C. 338(i)) as amended  
9 by subsection (a) of this section shall be effective 60 days  
10 after the date of enactment of this Act.

11 **SEC. 207. RECIPROCAL BARGAINING OBLIGATIONS.**

12 (a) AMENDMENTS.—Section 325(b)(3)(C) of the  
13 Communications Act of 1934 (47 U.S.C. 325(b)(3)(C)) is  
14 amended—

15 (1) by striking “Within 45 days” and all that  
16 follows through “1999, the” and inserting “The”;

17 (2) by striking the second sentence;

18 (3) by striking “and” at the end of clause (i);

19 (4) in clause (ii)—

20 (A) by striking “January 1, 2006” and in-  
21 serting “January 1, 2010”; and

22 (B) by striking the period at the end and  
23 inserting “; and”; and

24 (5) by adding at the end the following new  
25 clauses:



1 “(iii) until January 1, 2010, prohibit  
2 a multichannel video programming dis-  
3 tributor from failing to negotiate in good  
4 faith for retransmission consent under this  
5 section, and it shall not be a failure to ne-  
6 gotiate in good faith if the distributor en-  
7 ters into retransmission consent agree-  
8 ments containing different terms and con-  
9 ditions, including price terms, with dif-  
10 ferent broadcast stations if such different  
11 terms and conditions are based on com-  
12 petitive marketplace considerations.”.

13 (b) DEADLINE.—The Federal Communications Com-  
14 mission shall prescribe regulations to implement the  
15 amendments made by subsection (a)(5) within 180 days  
16 after the date of enactment of this Act.

17 **SEC. 208. STUDY OF IMPACT ON CABLE TELEVISION SERV-**  
18 **ICE.**

19 (a) STUDY REQUIRED.—No later than 9 months  
20 after the date of enactment of the Satellite Home Viewer  
21 Extension and Reauthorization Act of 2004, the Federal  
22 Communications Commission shall complete an inquiry re-  
23 garding the impact on competition in the multichannel  
24 video programming distribution market of the current re-  
25 transmission consent, network nonduplication, syndicated



1 carrier to whom the retransmission of the sig-  
2 nals of local broadcast stations is available  
3 under section 338 from such carrier.

4 “(E) EXCEPTION.—A satellite carrier may  
5 refuse to engage in the testing process. If the  
6 carrier does so refuse, a subscriber in a local  
7 market in which the satellite carrier does not  
8 offer the signals of local broadcast stations  
9 under section 338 may, at his or her own ex-  
10 pense, authorize a signal intensity test to be  
11 performed pursuant to the procedures specified  
12 by the Commission in section 73.686(d) of title  
13 47, Code of Federal Regulations, by a tester  
14 who is approved by the satellite carrier and by  
15 each affected network station, or who has been  
16 previously approved by the satellite carrier and  
17 by each affected network station but not pre-  
18 viously disapproved. A tester may not be so dis-  
19 approved for a test after the tester has com-  
20 menced such test. The tester shall give 5 busi-  
21 ness days advance written notice to the satellite  
22 carrier and to the affected network station or  
23 stations. A signal intensity test conducted in ac-  
24 cordance with this subparagraph shall be deter-  
25 minative of the signal strength received at that



1 household for purposes of determining whether  
2 the household is capable of receiving a Grade B  
3 intensity signal.”.

4 **SEC. 210. SATELLITE CARRIAGE OF TELEVISION STATIONS**  
5 **IN NONCONTIGUOUS STATES.**

6 Section 338(a) of the Communications Act of 1934  
7 (47 U.S.C. 338(a)) is amended by adding at the end the  
8 following:

9 “(4) CARRIAGE OF SIGNALS OF LOCAL STA-  
10 TIONS IN CERTAIN MARKETS.—A satellite carrier  
11 that offers multichannel video programming dis-  
12 tribution service in the United States to more than  
13 5,000,000 subscribers shall (A) within 1 year after  
14 the date of the enactment of the Satellite Home  
15 Viewer Extension and Reauthorization Act of 2004,  
16 retransmit the signals originating as analog signals  
17 of each television broadcast station located in any  
18 local market within a State that is not part of the  
19 contiguous United States, and (B) within 30 months  
20 after such date of enactment retransmit the signals  
21 originating as digital signals of each such station.  
22 The retransmissions of such stations shall be made  
23 available to substantially all of the satellite carrier’s  
24 subscribers in each station’s local market, and the  
25 retransmissions of the stations in at least one mar-



1 ket in the State shall be made available to substan-  
2 tially all of the satellite carrier's subscribers in areas  
3 of the State that are not within a designated market  
4 area. The cost to subscribers of such retransmissions  
5 shall not exceed the cost of retransmissions of local  
6 television stations in other States. Within 1 year  
7 after the date of enactment of that Act, the Com-  
8 mission shall promulgate regulations concerning  
9 elections by television stations in such State between  
10 mandatory carriage pursuant to this section and re-  
11 transmission consent pursuant to section 325(b),  
12 which shall take into account the schedule on which  
13 local television stations are made available to viewers  
14 in such State.”.

15 **SEC. 211. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN**  
16 **SUBSCRIBERS.**

17 ~~Part I of title III of the Communications Act of 1934~~  
18 ~~(47 U.S.C. 301 et seq.) is amended by inserting after sec-~~  
19 ~~tion 340 (as added by section 202) the following:~~

20 **“SEC. 341. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN**  
21 **SUBSCRIBERS.**

22 ~~“(a) IN GENERAL.—A multichannel video program-~~  
23 ~~ming distributor may elect to retransmit, to subscribers~~  
24 ~~in an eligible county—~~

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**SEC. 21. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN SUBSCRIBERS.**

Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by inserting after section 339 the following:

**"SEC. 341. CARRIAGE OF TELEVISION SIGNALS TO CERTAIN SUBSCRIBERS.**

(a) **"(a) IN GENERAL.**—A cable operator or satellite carrier may elect to retransmit, to subscribers in an eligible county—

**"(1)** any television broadcast stations that are located in the State in which the county is located and that any cable operator or satellite carrier was retransmitting to subscribers in the county on January 1, 2004; or

**"(2)** up to 2 television broadcast stations located in the State in which the county is located, if the number of television broadcast stations that the cable operator or satellite carrier is authorized to carry under paragraph (1) is less than 3.

**"(b) DEEMED SIGNIFICANTLY VIEWED.**—Any station described in subsection (a) is deemed to be significantly viewed in the eligible county within the meaning of section 76.54 of the Commission's regulations (47 C.F.R. 76.54).

**"(c) DEFINITION OF ELIGIBLE COUNTY.**—For purposes of this section, the term "eligible county" means any 1 of 4 counties that—

**"(1)** are all in a single State;

**"(2)** on January 1, 2004, were each in designated market areas in which the majority of counties were located in another State or States; and

**"(3)** as a group had a combined total of 41,340 television households according to the U.S. Television Household Estimates by Nielsen Media Research for 2003-2004.

**"(d) LIMITATION.**—Carriage of a station under this section shall be at the option of the cable operator or satellite carrier."

1 ~~(b) CONFORMING AMENDMENT.—~~Section 122(j)(2) of  
2 title 17, United States Code, is amended by adding at the  
3 end the following:

4 “(D) CERTAIN STATES.—If a satellite carrier  
5 elects, under section 338(a)(3)(A) or (B) of the Com-  
6 munications Act of 1934 (47 U.S.C. 338(a)(3)(A) or  
7 (B)), to carry the signal of a network station or  
8 superstation then, in addition to the area described in  
9 subparagraph (A) of this paragraph, the local market  
10 of that station includes, solely for the purposes of the  
11 secondary transmission of that signal by the satellite  
12 carrier, all households within the geographic borders  
13 of the State in which that station is licensed.”

14 SEC. ~~RETRANSMISSION OF SIGNALS INTO ADJACENT~~  
15 ~~LOCAL MARKET COMPRISING ONLY PART OF~~  
16 ~~A COUNTY.~~

17 Section 339 of the Communications Act of 1934 (47  
18 U.S.C. 339), as amended by section 4 of this Act, is amend-  
19 ed by adding at the end the following:

20 “(b) CERTAIN MARKETS.—Notwithstanding any  
21 other provision of law, a satellite carrier may not  
22 carry the signal of a television station into an adja-  
23 cent local market that is comprised of only a portion  
24 of a county, other than to unserved households located  
25 in that county.”

1       ~~“(1) any television broadcast stations that are~~  
2       ~~located in the State in which the county is located~~  
3       ~~and that any multichannel video programming dis-~~  
4       ~~tributor was retransmitting to subscribers in the~~  
5       ~~county on January 1, 2004; or~~

6       ~~“(2) up to 2 television broadcast stations lo-~~  
7       ~~cated in the State in which the county is located, if~~  
8       ~~the number of television broadcast stations that the~~  
9       ~~multichannel video programming distributor is au-~~  
10      ~~thorized to carry under paragraph (1) is less than~~  
11      ~~3.~~

12      ~~“(b) DEEMED SIGNIFICANTLY VIEWED.—Any sta-~~  
13      ~~tion described in subsection (a) is deemed to be signifi-~~  
14      ~~cantly viewed in the eligible county within the meaning~~  
15      ~~of section 76.54 of the Commission’s regulations (47~~  
16      ~~C.F.R. 76.54).~~

17      ~~“(c) DEFINITION OF ELIGIBLE COUNTY.—For pur-~~  
18      ~~poses of this subsection, the term ‘eligible county’ means~~  
19      ~~any 1 of 4 counties that—~~

20           ~~“(1) are in a single State;~~

21           ~~“(2) on January 1, 2004, were in local markets~~  
22      ~~principally comprised of counties in another State;~~  
23      ~~and~~

24           ~~“(3) had a combined total of 41,340 television~~  
25      ~~households according to the U.S. Television House-~~



1 ~~hold Estimates by Nielsen Media Research for~~  
2 ~~2003-2004.~~

3 ~~“(d) LIMITATION.—Carriage of a station under this~~  
4 ~~section shall be at the option of the multichannel video~~  
5 ~~programming distributor.”~~

6 **SEC. 212. DIGITAL TRANSITION SAVINGS PROVISION.**

7 Nothing in the dates by which requirements or other  
8 provisions are effective under this Act or the amendments  
9 made by this Act shall be construed—

10 (1) to impair the authority of the Federal Com-  
11 munications Commission to take any action with re-  
12 spect to the transition by television broadcasters to  
13 the digital television service; or

14 (2) to require the Commission to take any such  
15 action.

16 **SEC. 213. AUTHORIZING BROADCAST SERVICE IN**  
17 **UNSERVED AREAS OF ALASKA.**

18 Title III of the Communications Act of 1934 is  
19 amended as follows:

20 (1) In section 307(c)(3)—

21 (A) by striking “any hearing” and insert-  
22 ing in lieu thereof “any administrative or judi-  
23 cial hearing”; and

24 (B) by inserting “or section 402” after  
25 “section 405”.



1 (2) In section 307, by adding at the end the fol-  
2 lowing new subsection:

3 “(f) Notwithstanding any other provision of law, (1)  
4 any holder of a broadcast license may broadcast to an area  
5 of Alaska that otherwise does not have access to over the  
6 air broadcasts via translator, microwave, or other alter-  
7 native signal delivery even if another holder of a broadcast  
8 license begins broadcasting to such area, (2) any holder  
9 of a broadcast license who has broadcast to an area of  
10 Alaska that did not have access to over the air broadcasts  
11 via translator, microwave, or other alternative signal deliv-  
12 ery may continue providing such service even if another  
13 holder of a broadcast license begins broadcasting to such  
14 area, and shall not be fined or subject to any other pen-  
15 alty, forfeiture, or revocation related to providing such  
16 service including any fine, penalty, forfeiture, or revoca-  
17 tion for continuing to operate notwithstanding orders to  
18 the contrary.”.

19 (3) In section 312(g), by inserting before the  
20 period at the end the following: “<sup>^</sup>except that the A  
21 Commission may extend or reinstate such station li-  
22 cense if the holder of the station license prevails in  
23 an administrative or judicial appeal, the applicable  
24 law changes, or for any other reason to promote eq-  
25 uity and fairness. Any broadcast license revoked or



1       terminated in Alaska in a proceeding related to  
2       broadcasting via translator, microwave, or other al-  
3       ternative signal delivery is reinstated”.





TITLE X - SNAKE RIVER WATER RIGHTS  
ACT OF 2004

24

1 purposes of enforcing the provisions of the Agree-  
2 ment.

3 (3) EFFECT OF SUBSECTION.—Nothing in this  
4 subsection confers jurisdiction on any State court  
5 to—

6 (A) enforce Federal environmental laws re-  
7 garding the duties of the United States; or

8 (B) conduct judicial review of Federal  
9 agency action.

10 SECTION 1. SHORT TITLE.

11 This Act may be cited as the “Snake River Water  
12 Rights <sup>title</sup> ~~Act~~ of 2004”.

13 SEC. 2. PURPOSES.

14 The purposes of this Act are—

15 (1) to resolve some of the largest outstanding  
16 issues with respect to the Snake River Basin Adju-  
17 dication in Idaho in such a manner as to provide im-  
18 portant benefits to the United States, the State of  
19 Idaho, the Nez Perce Tribe, the allottees, and citizens  
20 of the State;

21 (2) to achieve a fair, equitable, and final settle-  
22 ment of all claims of the Nez Perce Tribe, its mem-  
23 bers, and allottees and the United States on behalf of  
24 the Tribe, its members, and allottees to the water of  
25 the Snake River Basin within Idaho;

1           (3) to authorize, ratify, and confirm the Agree-  
 2       ment among the parties submitted to the Snake River  
 3       Basin Adjudication Court and provide all parties  
 4       with the benefits of the Agreement;

5           (4) to direct—

6               (A) the Secretary, acting through the Bu-  
 7       reau of Reclamation, the Bureau of Land Man-  
 8       agement, the Bureau of Indian Affairs, and other  
 9       agencies; and

10               (B) the heads of other Federal agencies au-  
 11       thorized to execute and perform actions necessary  
 12       to carry out the Agreement;

13       to perform all of their obligations under the Agree-  
 14       ment and this Act; and

15           (5) to authorize the actions and appropriations  
 16       necessary for the United States to meet the obligations  
 17       of the United States under the Agreement and this  
 18       Act.

19   **SEC. 3. DEFINITIONS.**

20       In this Act:

21           (1) **AGREEMENT.**—The term “Agreement” means  
 22       the document titled “Mediator’s Term Sheet” dated  
 23       April 20, 2004, and submitted on that date to the  
 24       SRBA Court in SRBA Consolidated Subcase 03–

1 10022 and SRBA Consolidated Subcase 67-13701,  
2 with all appendices to the document.

3 (2) ALLOTTEE.—The term “allottee” means a  
4 person that holds a beneficial real property interest in  
5 an Indian allotment that is—

6 (A) located within the Nez Perce Reserva-  
7 tion; and

8 (B) held in trust by the United States.

9 (3) CONSUMPTIVE USE RESERVED WATER  
10 RIGHT.—The term “consumptive use reserved water  
11 right” means the Federal reserved water right of  
12 50,000 acre-feet per year, as described in the Agree-  
13 ment, to be decreed to the United States in trust for  
14 the Tribe and the allottees, with a priority date of  
15 1855.

16 (4) PARTIES.—The term “parties” means the  
17 United States, the State, the Tribe, and any other en-  
18 tity or person that submitted, or joined in the submis-  
19 sion of, the Agreement to the SRBA Court on April  
20 20, 2004.

21 (5) SECRETARY.—The term “Secretary” means  
22 the Secretary of the Interior.

23 (6) SNAKE RIVER BASIN.—The term “Snake  
24 River Basin” means the geographic area in the State

1       described in paragraph 3 of the Commencement Order  
2       issued by the SRBA Court on November 19, 1987.

3           (7) *SPRINGS OR FOUNTAINS WATER RIGHT.*—The  
4       term “springs or fountains water right” means the  
5       Tribe’s treaty right of access to and use of water from  
6       springs or fountains on Federal public land within  
7       the area ceded by the Tribe in the Treaty of June 9,  
8       1863 (14 Stat. 647), as recognized under the Agree-  
9       ment.

10          (8) *SRBA.*—The term “SRBA” means the Snake  
11       River Basin Adjudication litigation before the SRBA  
12       Court styled as *In re Snake River Basin Adjudica-*  
13       *tion*, Case No. 39576.

14          (9) *SRBA COURT.*—The term “SRBA Court”  
15       means the District Court of the Fifth Judicial Dis-  
16       trict of the State of Idaho, In and For the County of  
17       Twin Falls in re Snake River Basin Adjudication.

18          (10) *STATE.*—The term “State” means the State  
19       of Idaho.

20          (11) *TRIBE.*—The term “Tribe” means the Nez  
21       Perce Tribe.

1 **SEC. 4. APPROVAL, RATIFICATION, AND CONFIRMATION OF**  
 2 **AGREEMENT.**

3 (a) *IN GENERAL.*—Except to the extent that the Agree-  
 4 ment conflicts with this Act, the Agreement is approved,  
 5 ratified, and confirmed.

6 (b) *EXECUTION AND PERFORMANCE.*—The Secretary  
 7 and the other heads of Federal agencies with obligations  
 8 under the Agreement shall execute and perform all actions,  
 9 consistent with this Act, that are necessary to carry out the  
 10 Agreement.

11 **SEC. 5. BUREAU OF RECLAMATION WATER USE.**

12 (a) *IN GENERAL.*—As part of the overall implementa-  
 13 tion of the Agreement, the Secretary shall take such actions  
 14 consistent with the Agreement, this Act, and water law of  
 15 the State as are necessary to carry out the Snake River  
 16 Flow Component of the Agreement.

17 (b) *MITIGATION FOR CHANGE OF USE OF WATER.*—

18 (1) *AUTHORIZATION OF APPROPRIATIONS.*—  
 19 There is authorized to be appropriated to the Sec-  
 20 retary \$2,000,000 for a 1-time payment to local gov-  
 21 ernments to mitigate for the change of use of water  
 22 acquired by the Bureau of Reclamation under section  
 23 III.C.6 of the Agreement.

24 (2) *DISTRIBUTION OF FUNDS.*—Funds made  
 25 available under paragraph (1) shall be distributed by

1       the Secretary to local governments in accordance with  
2       a plan provided to the Secretary by the State.

3           (3) *PAYMENTS.*—Payments by the Secretary  
4       shall be made on a pro rata basis as water rights are  
5       acquired by the Bureau of Reclamation.

6   **SEC. 6. BUREAU OF LAND MANAGEMENT LAND TRANSFER.**

7       (a) *TRANSFER.*—

8           (1) *IN GENERAL.*—The Secretary shall transfer  
9       land selected by the Tribe under paragraph (2) to the  
10      Bureau of Indian Affairs to be held in trust for the  
11      Tribe.

12          (2) *LAND SELECTION.*—The land transferred  
13      shall be selected by the Tribe from a list of parcels of  
14      land managed by the Bureau of Land Management  
15      that are available for transfer, as depicted on the map  
16      entitled “North Idaho BLM Land Eligible for Selec-  
17      tion by the Nez Perce Tribe” dated May 2004, on file  
18      with the Director of the Bureau of Land Management,  
19      not including any parcel designated on the map as  
20      being on the Clearwater River or Lolo Creek.

21          (3) *MAXIMUM VALUE.*—The land selected by the  
22      Tribe for transfer shall be limited to a maximum  
23      value in total of not more than \$7,000,000, as deter-  
24      mined by an independent appraisal of fair market  
25      value prepared in accordance with the Uniform

1     *Standards of Professional Appraisal Practice and the*  
2     *Uniform Appraisal Standards for Federal Land Ac-*  
3     *quisitions.*

4     (b) *EXISTING RIGHTS AND USES.*—

5         (1) *IN GENERAL.*—On any land selected by the  
6     Tribe under subsection (a)(2), any use in existence on  
7     the date of transfer under subsection (a) under a lease  
8     or permit with the Bureau of Land Management, in-  
9     cluding grazing, shall remain in effect until the date  
10    of expiration of the lease or permit, unless the holder  
11    of the lease or permit requests an earlier termination  
12    of the lease or permit, in which case the Secretary  
13    shall grant the request.

14        (2) *AVAILABILITY OF AMOUNTS.*—Amounts that  
15    accrue to the United States under a lease or permit  
16    described in paragraph (1) from sales, bonuses, royal-  
17    ties, and rentals relating to any land transferred to  
18    the Tribe under this section shall be made available  
19    to the Tribe by the Secretary in the same manner as  
20    amounts received from other land held by the Sec-  
21    retary in trust for the Tribe.

22        (c) *DATE OF TRANSFER.*—No land shall be transferred  
23    to the Bureau of Indian Affairs to be held in trust for the  
24    Tribe under this section until the waivers and releases  
25    under section 10(a) take effect.

1       (d) *AUTHORIZATION OF APPROPRIATIONS.*—

2               (1) *IN GENERAL.*—*There is authorized to be ap-*  
 3       *propriated to the Secretary \$200,000 for 1-time pay-*  
 4       *ments to local governments to mitigate for the trans-*  
 5       *fer of land by the Bureau of Land Management to the*  
 6       *Tribe under section I.F of the Agreement.*

7               (2) *PAYMENTS.*—*Payments under paragraph (1)*  
 8       *shall be made on a pro rata basis as parcels of land*  
 9       *are acquired by the Tribe.*

10   **SEC. 7. WATER RIGHTS.**

11       (a) *HOLDING IN TRUST.*—

12               (1) *IN GENERAL.*—*The consumptive use reserved*  
 13       *water right shall—*

14                       (A) *be held in trust by the United States for*  
 15       *the benefit of the Tribe and allottees as set forth*  
 16       *in this section; and*

17                       (B) *be subject to section 7 of the Act of Feb-*  
 18       *ruary 8, 1887 (25 U.S.C. 381).*

19               (2) *SPRINGS OR FOUNTAINS WATER RIGHT.*—*The*  
 20       *springs or fountains water right of the Tribe shall be*  
 21       *held in trust by the United States for the benefit of*  
 22       *the Tribe.*

23               (3) *ALLOTTEES.*—*Allottees shall be entitled to a*  
 24       *just and equitable allocation of the consumptive use*  
 25       *reserved water right for irrigation purposes.*



1       (b) *WATER CODE.*—

2           (1) *ENACTMENT OF WATER CODE.*—Not later  
3       than 3 years after the date of enactment of this Act,  
4       the Tribe shall enact a water code, subject to any ap-  
5       plicable provision of law, that—

6           (A) manages, regulates, and controls the  
7       consumptive use reserved water right so as to al-  
8       locate water for irrigation, domestic, commercial,  
9       municipal, industrial, cultural, or other uses;  
10      and

11          (B) includes, subject to approval of the Sec-  
12      retary—

13           (i) a due process system for the consid-  
14      eration and determination of any request by  
15      an allottee, or any successor in interest to  
16      an allottee, for an allocation of such water  
17      for irrigation purposes on allotted land, in-  
18      cluding a process for an appeal and adju-  
19      dication of denied or disputed distribution  
20      of water and for resolution of contested ad-  
21      ministrative decisions; and

22           (ii) a process to protect the interests of  
23      allottees when entering into any lease under  
24      subsection (e).

1           (2) *SECRETARIAL APPROVAL.*—Any provision of  
2       the water code and any amendments to the water code  
3       that affect the rights of the allottees shall be subject  
4       to approval by the Secretary, and no such provision  
5       or amendment shall be valid until approved by the  
6       Secretary.

7           (3) *INTERIM ADMINISTRATION.*—The Secretary  
8       shall administer the consumptive use reserved water  
9       right until such date as the water code described in  
10      paragraph (2) has been enacted by the Tribe and the  
11      Secretary has approved the relevant portions of the  
12      water code.

13       (c) *EXHAUSTION OF REMEDIES.*—Before asserting any  
14      claim against the United States under section 7 of the Act  
15      of February 8, 1887 (25 U.S.C. 381) or other applicable  
16      law, a claimant shall exhaust remedies available under the  
17      Tribe's water code and Tribal law.

18       (d) *PETITION TO THE SECRETARY.*—Following ex-  
19      haustion of remedies in accordance with subsection (c), a  
20      claimant may petition the Secretary for relief.

21       (e) *SATISFACTION OF CLAIMS.*—

22           (1) *IN GENERAL.*—The water rights and other  
23      benefits granted or confirmed by the Agreement and  
24      this Act shall be in full satisfaction of all claims for

1      *water rights and injuries to water rights of the*  
 2      *allottees.*

3            (2) *SATISFACTION OF ENTITLEMENTS.*—*Any en-*  
 4      *titlement to water of any allottee under Federal law*  
 5      *shall be satisfied out of the consumptive use reserved*  
 6      *water right.*

7            (3) *COMPLETE SUBSTITUTION.*—*The water*  
 8      *rights, resources, and other benefits provided by this*  
 9      *Act are a complete substitution for any rights that*  
 10     *may have been held by, or any claims that may have*  
 11     *been asserted by, allottees within the exterior bound-*  
 12     *aries of the Reservation before the date of enactment*  
 13     *of this Act.*

14          (f) *ABANDONMENT, FORFEITURE, OR NONUSE.*—*The*  
 15     *consumptive use reserved water right and the springs or*  
 16     *fountains water right shall not be subject to loss by aban-*  
 17     *donment, forfeiture, or nonuse.*

18          (g) *LEASE OF WATER.*—

19            (1) *IN GENERAL.*—*Subject to the water code, the*  
 20     *Tribe, without further approval of the Secretary, may*  
 21     *lease water to which the Tribe is entitled under the*  
 22     *consumptive use reserved water right through any*  
 23     *State water bank in the same manner and subject to*  
 24     *the same rules and requirements that govern any*  
 25     *other lessor of water to the water bank.*

1           (2) *FUNDS.*—Any funds accruing to the Tribe  
 2     from any lease under paragraph (1) shall be the prop-  
 3     erty of the Tribe, and the United States shall have no  
 4     trust obligation or other obligation to monitor, ad-  
 5     minister, or account for any consideration received by  
 6     the Tribe under any such lease.

7 **SEC. 8. TRIBAL FUNDS.**

8           (a) *DEFINITION OF FUND.*—In this section, the term  
 9     “Fund” means—

10           (1) the Nez Perce Tribe Water and Fisheries  
 11     Fund established under subsection (b)(1); and

12           (2) the Nez Perce Tribe Domestic Water Supply  
 13     Fund established under subsection (b)(2).

14           (b) *ESTABLISHMENT.*—There are established in the  
 15     Treasury of the United States—

16           (1) a fund to be known as the “Nez Perce Tribe  
 17     Water and Fisheries Fund”, to be used to pay or re-  
 18     imburse costs incurred by the Tribe in acquiring land  
 19     and water rights, restoring or improving fish habitat,  
 20     or for fish production, agricultural development, cul-  
 21     tural preservation, water resource development, or  
 22     fisheries-related projects; and

23           (2) a fund to be known as the “Nez Perce Domes-  
 24     tic Water Supply Fund”, to be used to pay the costs  
 25     for design and construction of water supply and

1        *sewer systems for tribal communities, including a*  
 2        *water quality testing laboratory.*

3        (c) *MANAGEMENT OF THE FUNDS.—The Secretary*  
 4        *shall manage the Funds, make investments from the Funds,*  
 5        *and make amounts available from the Funds for distribu-*  
 6        *tion to the Tribe consistent with the American Indian Trust*  
 7        *Fund Management Reform Act of 1994 (25 U.S.C. 4001 et*  
 8        *seq.), this Act, and the Agreement.*

9        (d) *INVESTMENT OF THE FUNDS.—The Secretary shall*  
 10       *invest amounts in the Funds in accordance with—*

11            (1) *the Act of April 1, 1880 (25 U.S.C. 161; 21*  
 12        *Stat. 70, chapter 41);*

13            (2) *the first section of the Act of June 24, 1938*  
 14        *(25 U.S.C. 162a; 52 Stat. 1037, chapter 648); and*

15            (3) *subsection (c).*

16        (e) *AVAILABILITY OF AMOUNTS FROM THE FUNDS.—*  
 17        *Amounts made available under subsection (h) shall be avail-*  
 18        *able for expenditure or withdrawal only after the waivers*  
 19        *and releases under section 10(a) take effect.*

20        (f) *EXPENDITURES AND WITHDRAWAL.—*

21            (1) *TRIBAL MANAGEMENT PLAN.—*

22                    (A) *IN GENERAL.—The Tribe may with-*  
 23        *draw all or part of amounts in the Funds on ap-*  
 24        *proval by the Secretary of a tribal management*  
 25        *plan as described in the American Indian Trust*

1       *Fund Management Reform Act of 1994 (25*  
2       *U.S.C. 4001 et seq.).*

3               (B) *REQUIREMENTS.*—*In addition to the*  
4       *requirements under the American Indian Trust*  
5       *Fund Management Reform Act of 1994 (25*  
6       *U.S.C. 4001 et seq.), the tribal management plan*  
7       *shall require that the Tribe spend any amounts*  
8       *withdrawn from the Funds in accordance with*  
9       *the purposes described in subsection (b).*

10              (C) *ENFORCEMENT.*—*The Secretary may*  
11       *take judicial or administrative action to enforce*  
12       *the provisions of any tribal management plan to*  
13       *ensure that any amounts withdrawn from the*  
14       *Funds under the plan are used in accordance*  
15       *with this Act and the Agreement.*

16              (D) *LIABILITY.*—*If the Tribe exercises the*  
17       *right to withdraw amounts from the Funds, nei-*  
18       *ther the Secretary nor the Secretary of the Treas-*  
19       *ury shall retain any liability for the expenditure*  
20       *or investment of the amounts.*

21              (2) *EXPENDITURE PLAN.*—

22                   (A) *IN GENERAL.*—*The Tribe shall submit*  
23       *to the Secretary for approval an expenditure*  
24       *plan for any portion of the amounts made avail-*

1        *able under subsection (h) that the Tribe does not*  
 2        *withdraw under this subsection.*

3                (B) *DESCRIPTION.*—*The expenditure plan*  
 4        *shall describe the manner in which, and the pur-*  
 5        *poses for which, amounts of the Tribe remaining*  
 6        *in the Funds will be used.*

7                (C) *APPROVAL.*—*On receipt of an expendi-*  
 8        *ture plan under subparagraph (A), the Secretary*  
 9        *shall approve the plan if the Secretary deter-*  
 10       *mines that the plan is reasonable and consistent*  
 11       *with this Act and the Agreement.*

12               (D) *ANNUAL REPORT.*—*For each Fund, the*  
 13        *Tribe shall submit to the Secretary an annual*  
 14        *report that describes all expenditures from the*  
 15        *Fund during the year covered by the report.*

16        (g) *NO PER CAPITA PAYMENTS.*—*No part of the prin-*  
 17        *cipal of the Funds, or of the income accruing in the Funds,*  
 18        *shall be distributed to any member of the Tribe on a per*  
 19        *capita basis.*

20        (h) *AUTHORIZATION OF APPROPRIATIONS.*—*There are*  
 21        *authorized to be appropriated—*

22               (1) *to the Nez Perce Tribe Water and Fisheries*  
 23        *Fund—*

24                        (A) *for fiscal year 2007, \$7,830,000;*

25                        (B) *for fiscal year 2008, \$4,730,000;*

- 1                   (C) for fiscal year 2009, \$7,380,000;  
 2                   (D) for fiscal year 2010, \$10,080,000;  
 3                   (E) for fiscal year 2011, \$11,630,000;  
 4                   (F) for fiscal year 2012, \$9,450,000; and  
 5                   (G) for fiscal year 2013, \$9,000,000; and  
 6           (2) to the Nez Perce Tribe Domestic Water Sup-  
 7       ply Fund—  
 8                   (A) for fiscal year 2007, \$5,100,000;  
 9                   (B) for fiscal year 2008, \$8,200,000;  
 10                  (C) for fiscal year 2009, \$5,550,000;  
 11                  (D) for fiscal year 2010, \$2,850,000; and  
 12                  (E) for fiscal year 2011, \$1,300,000.

13 **SEC. 9. SALMON AND CLEARWATER RIVER BASINS HABITAT**  
 14 **FUND.**

15       (a) *ESTABLISHMENT OF FUND.*—

16           (1) *IN GENERAL.*—There is established in the  
 17 Treasury of the United States a fund to be known as  
 18 the “Salmon and Clearwater River Basins Habitat  
 19 Fund” (referred to in this section as the “Fund”), to  
 20 be administered by the Secretary.

21           (2) *ACCOUNTS.*—There is established within the  
 22 Fund—

23                   (A) an account to be known as the “Nez  
 24 Perce Tribe Salmon and Clearwater River Ba-  
 25 sins Habitat Account”, which shall be adminis-



1           tered by the Secretary for use by the Tribe sub-  
 2           ject to the same provisions for management, in-  
 3           vestment, and expenditure as the funds estab-  
 4           lished by section 8; and

5                   (B) an account to be known as the “Idaho  
 6           Salmon and Clearwater River Basins Habitat  
 7           Account”, which shall be administered by the  
 8           Secretary and provided to the State as provided  
 9           in the Agreement and this Act.

10       (b) *USE OF THE FUND.*—

11           (1) *IN GENERAL.*—The Fund shall be used to  
 12           supplement amounts made available under any other  
 13           law for habitat protection and restoration in the  
 14           Salmon and Clearwater River Basins in Idaho, in-  
 15           cluding projects and programs intended to protect  
 16           and restore listed fish and their habitat in those ba-  
 17           sins, as specified in the Agreement and this Act.

18           (2) *RELEASE OF FUNDS.*—The Secretary shall  
 19           release funds from the Idaho Salmon and Clearwater  
 20           River Basins Habitat Account in accordance with  
 21           section 6(d)(2) of the Endangered Species Act (16  
 22           U.S.C. 1535(d)(2)).

23           (3) *NO ALLOCATION REQUIREMENT.*—The use of  
 24           the Fund shall not be subject to the allocation proce-

1       dures under section 6(d)(1) of the Endangered Species  
2       Act of 1973 (16 U.S.C. 1535(d)(1)).

3       (c) *AVAILABILITY OF AMOUNTS IN THE FUND.*—  
4       Amounts made available under subsection (d) shall be  
5       available for expenditure or withdrawal only after the waiv-  
6       ers and releases under section 10(a) take effect.

7       (d) *AUTHORIZATION OF APPROPRIATIONS.*—There are  
8       authorized to be appropriated—

9               (1) to the Nez Perce Tribe Salmon and Clear-  
10       water River Basins Habitat Account, \$2,533,334 for  
11       each of fiscal years 2007 through 2011; and

12              (2) to the Idaho Salmon and Clearwater River  
13       Basins Habitat Account, \$5,066,666 for each of fiscal  
14       years 2007 through 2011.

15   **SEC. 10. TRIBAL WAIVER AND RELEASE OF CLAIMS.**

16       (a) *WAIVER AND RELEASE OF CLAIMS IN GENERAL.*—

17              (1) *CLAIMS TO WATER RIGHTS; CLAIMS FOR IN-*  
18       *JURIES TO WATER RIGHTS OR TREATY RIGHTS.*—Ex-  
19       cept as otherwise provided in this Act, the United  
20       States on behalf of the Tribe and the allottees, and the  
21       Tribe, waive and release—

22                   (A) all claims to water rights within the  
23       Snake River Basin (as defined in section 3);

24                   (B) all claims for injuries to such water  
25       rights; and

1           (C) all claims for injuries to the treaty  
 2           rights of the Tribe to the extent that such inju-  
 3           ries result or resulted from flow modifications or  
 4           reductions in the quantity of water available  
 5           that accrued at any time up to and including  
 6           the effective date of the settlement, and any con-  
 7           tinuation thereafter of any such claims, against  
 8           the State, any agency or political subdivision of  
 9           the State, or any person, entity, corporation,  
 10          municipal corporation, or quasi-municipal cor-  
 11          poration.

12          (2) CLAIMS BASED ON REDUCED WATER QUALITY  
 13          OR REDUCTIONS IN WATER QUANTITY.—The United  
 14          States on behalf of the Tribe and the allottees, and the  
 15          Tribe, waive and release any claim, under any treaty  
 16          theory, based on reduced water quality resulting di-  
 17          rectly from flow modifications or reductions in the  
 18          quantity of water available in the Snake River Basin  
 19          against any party to the Agreement.

20          (3) NO FUTURE ASSERTION OF CLAIMS.—No  
 21          water right claim that the Tribe or the allottees have  
 22          asserted or may in the future assert outside the Snake  
 23          River Basin shall require water to be supplied from  
 24          the Snake River Basin to satisfy the claim.

1           (4) *EFFECT OF WAIVERS AND RELEASES.*—*The*  
 2       *waivers and releases by the United States and the*  
 3       *Tribe under this subsection—*

4               (A) *shall be permanent and enforceable; and*

5               (B) *shall survive any subsequent termi-*  
 6       *nation of any component of the settlement de-*  
 7       *scribed in the Agreement or this Act.*

8           (5) *EFFECTIVE DATE.*—*The waivers and releases*  
 9       *under this subsection shall take effect on the date on*  
 10      *which the Secretary causes to be published in the Fed-*  
 11      *eral Register a statement of findings that the actions*  
 12      *set forth in section IV.L of the Agreement—*

13               (A) *have been completed, including issuance*  
 14      *of a judgment and decree by the SRBA court*  
 15      *from which no further appeal may be taken; and*

16               (B) *have been determined by the United*  
 17      *States on behalf of the Tribe and the allottees, the*  
 18      *Tribe, and the State of Idaho to be consistent in*  
 19      *all material aspects with the Agreement.*

20       (b) *WAIVER AND RELEASE OF CLAIMS AGAINST THE*  
 21      *UNITED STATES.—*

22           (1) *IN GENERAL.*—*In consideration of perform-*  
 23      *ance by the United States of all actions required by*  
 24      *the Agreement and this Act, including the appropria-*  
 25      *tion of all funds authorized under sections 8(h) and*

1       9(d)(1), the Tribe shall execute a waiver and release  
2       of the United States from—

3               (A) all claims for water rights within the  
4       Snake River Basin, injuries to such water rights,  
5       or breach of trust claims for failure to protect,  
6       acquire, or develop such water rights that ac-  
7       crued at any time up to and including the effec-  
8       tive date determined under paragraph (2);

9               (B) all claims for injuries to the Tribe's  
10       treaty fishing rights, to the extent that such inju-  
11       ries result or resulted from reductions in the  
12       quantity of water available in the Snake River  
13       Basin;

14              (C) all claims of breach of trust for failure  
15       to protect Nez Perce springs or fountains treaty  
16       rights reserved in article VIII of the Treaty of  
17       June 9, 1863 (14 Stat. 651); and

18              (D) all claims of breach of trust arising out  
19       of the negotiation of or resulting from the adop-  
20       tion of the Agreement.

21       (2) *EFFECTIVE DATE.*—

22              (A) *IN GENERAL.*—The waiver and release  
23       contained in this subsection shall take effect on  
24       the date on which the amounts authorized under  
25       sections 8(h) and 9(d)(1) are appropriated.

1                   (B) *PERIODS OF LIMITATION; EQUITABLE*  
 2                   *CLAIMS.*—

3                   (i) *IN GENERAL.*—All periods of limi-  
 4                   tation and time-based equitable defenses ap-  
 5                   plicable to the claims set forth in paragraph  
 6                   (1) are tolled for the period between the date  
 7                   of enactment of this Act until the earlier  
 8                   of—

9                   (I) the date on which the amounts  
 10                  authorized under sections 8(h) and  
 11                  9(d)(1) are appropriated; or

12                  (II) October 1, 2017.

13                  (ii) *EFFECT OF SUBPARAGRAPH.*—This  
 14                  subparagraph neither revives any claim nor  
 15                  tolls any period of limitation or time-based  
 16                  equitable defense that may have expired be-  
 17                  fore the date of enactment of this Act.

18                  (3) *DEFENSE.*—The making of the amounts of  
 19                  appropriations authorized under sections 8(h) and  
 20                  9(d)(1) shall constitute a complete defense to any  
 21                  claim pending in any court of the United States on  
 22                  the date on which the appropriations are made.

23                  (c) *RETENTION OF RIGHTS.*—

1           (1) *IN GENERAL.*—*The Tribe shall retain all*  
 2           *rights not specifically waived or released in the Agree-*  
 3           *ment or this Act.*

4           (2) *DWORSHAK PROJECT.*—*Nothing in the Agree-*  
 5           *ment or this Act constitutes a waiver by the Tribe of*  
 6           *any claim against the United States resulting from*  
 7           *the construction and operation of the Dworshak*  
 8           *Project (Project PWI 05090), other than those speci-*  
 9           *fied in subparagraphs (A) and (B) of subsection*  
 10          *(b)(1).*

11          (3) *FUTURE ACQUISITION OF WATER RIGHTS.*—  
 12          *Nothing in the Agreement or this Act precludes the*  
 13          *Tribe or allottees, or the United States as trustee for*  
 14          *the Tribe or allottees, from purchasing or otherwise*  
 15          *acquiring water rights in the future to the same ex-*  
 16          *tent as any other entity in the State.*

17 **SEC. 11. MISCELLANEOUS.**

18          (a) *GENERAL DISCLAIMER.*—*The parties expressly re-*  
 19          *serve all rights not specifically granted, recognized, or relin-*  
 20          *quished by the settlement described in the Agreement or this*  
 21          *Act.*

22          (b) *DISCLAIMER REGARDING OTHER AGREEMENTS*  
 23          *AND PRECEDENT.*—

24               (1) *IN GENERAL.*—*Subject to section 9(b)(3),*  
 25               *nothing in this Act amends, supersedes, or preempts*

1        *any State law, Federal law, Tribal law, or interstate*  
 2        *compact that pertains to the Snake River Basin.*

3            (2) *NO ESTABLISHMENT OF STANDARD.—Nothing*  
 4        *in this Act—*

5            (A) *establishes any standard for the quan-*  
 6        *tification of Federal reserved water rights or any*  
 7        *other Indian water claims of any other Indian*  
 8        *tribes in any other judicial or administrative*  
 9        *proceeding; or*

10          (B) *limits the rights of the parties to liti-*  
 11        *gate any issue not resolved by the Agreement or*  
 12        *this Act.*

13          (3) *NO ADMISSION AGAINST INTEREST.—Nothing*  
 14        *in this Act constitutes an admission against interest*  
 15        *against any party in any legal proceeding.*

16          (c) *TREATY RIGHTS.—Nothing in the Agreement or*  
 17        *this Act impairs the treaty fishing, hunting, pasturing, or*  
 18        *gathering rights of the Tribe except to the extent expressly*  
 19        *provided in the Agreement or this Act.*

20          (d) *OTHER CLAIMS.—Nothing in the Agreement or this*  
 21        *Act quantifies or otherwise affects the water rights, claims,*  
 22        *or entitlements to water, or any other treaty right, of any*  
 23        *Indian tribe, band, or community other than the Tribe.*

24          (e) *RECREATION ON DWORSHAK RESERVOIR.—*



1           (1) *IN GENERAL.*—*In implementing the provi-*  
 2           *sions of the Agreement and this Act relating to the use*  
 3           *of water stored in Dworshak Reservoir for flow aug-*  
 4           *mentation purposes, the heads of the Federal agencies*  
 5           *involved in the operational Memorandum of Agree-*  
 6           *ment referred to in the Agreement shall implement a*  
 7           *flow augmentation plan beneficial to fish and con-*  
 8           *sistent with the Agreement.*

9           (2) *CONTENTS OF PLAN.*—*The flow augmentation*  
 10          *plan may include provisions beneficial to recreational*  
 11          *uses of the reservoir through maintenance of the full*  
 12          *level of the reservoir for prolonged periods during the*  
 13          *summer months.*

14          (f) *JURISDICTION.*—

15           (1) *NO EFFECT ON SUBJECT MATTER JURISDIC-*  
 16          *TION.*—*Nothing in the Agreement or this Act restricts,*  
 17          *enlarges, or otherwise determines the subject matter*  
 18          *jurisdiction of any Federal, State, or Tribal court.*

19           (2) *CONSENT TO JURISDICTION.*—*The United*  
 20          *States consents to jurisdiction in a proper forum for*  
 21          *purposes of enforcing the provisions of the Agreement.*

22           (3) *EFFECT OF SUBSECTION.*—*Nothing in this*  
 23          *subsection confers jurisdiction on any State court*  
 24          *to—*

1                   (A) enforce *Federal environmental laws re-*  
2                   *garding the duties of the United States; or*

3                   (B) conduct *judicial review of Federal agen-*  
4                   *cy action.*

1 **DIVISION K—SMALL BUSINESS**

2 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

3 (a) SHORT TITLE.—This division may be cited as the  
4 “Small Business Reauthorization and Manufacturing As-  
5 sistance Act of 2004”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this division is as follows:

**TITLE I—SMALL BUSINESS REAUTHORIZATION AND  
MANUFACTURING**

Sec. 1. Short title; table of contents.

**Subtitle A—Small manufacturers assistance**

Sec. 101. Express loans.

Sec. 102. Loan guarantee fees.

Sec. 103. Increase in guarantee amount and institution of associated fee.

Sec. 104. Debenture size.

Sec. 105. Job requirements.

Sec. 106. Report regarding national database of small manufacturers.

Sec. 107. International trade.

**Subtitle B—Authorizations**

**CHAPTER 1—PROGRAM AUTHORIZATION LEVELS AND ADDITIONAL  
REAUTHORIZATIONS**

Sec. 121. Program authorization levels.

Sec. 122. Additional reauthorizations.

**CHAPTER 2—PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM  
AUTHORIZATIONS AND SUNDRY AMENDMENTS**

Sec. 123. Paul D. Coverdell drug-free workplace program authorization provi-  
sions.

Sec. 124. Grant provisions.

Sec. 125. Drug-free communities coalitions as eligible intermediaries.

Sec. 126. Promotion of effective practices of eligible intermediaries.

Sec. 127. Report to Congress.

**Subtitle C—Administration Management**

Sec. 131. Lender examination and review fees.

Sec. 132. Gifts and co-sponsorship of events.

**Subtitle D—Entrepreneurial development programs**

**CHAPTER 1—OFFICE OF ENTREPRENEURIAL DEVELOPMENT**



- Sec. 141. Service Corps of Retired Executives.
- Sec. 142. Small business development center program.

CHAPTER 2—OFFICE OF VETERANS BUSINESS DEVELOPMENT

- Sec. 143. Advisory Committee on Veterans Business Affairs.
- Sec. 144. Outreach grants for veterans.
- Sec. 145. Authorization of appropriations.
- Sec. 146. National Veterans Business Development Corporation.

CHAPTER 3—MANUFACTURING AND ENTREPRENEURIAL DEVELOPMENT

- Sec. 147. Small Business Manufacturing Task Force.

Subtitle E—HUBZone Program

- Sec. 151. Streamlining and revision of HUBZone eligibility requirements.
- Sec. 152. Expansion of qualified areas.
- Sec. 153. Price evaluation preference.
- Sec. 154. HUBZone Authorizations.
- Sec. 155. Participation in federally funded projects.

Subtitle F—Small business lending companies

- Sec. 161. Supervisory and enforcement authority for small business lending companies.
- Sec. 162. Definitions relating to small business lending companies.

TITLE II—MISCELLANEOUS AMENDMENTS

- Sec. 201. Amendment to definition of equity capital with respect to issuers of participating securities.
- Sec. 202. Investment of excess funds.
- Sec. 203. Surety bond amendments.
- Sec. 204. Effective date for certain fees.

1 **TITLE I—SMALL BUSINESS RE-**  
2 **AUTHORIZATION AND MANU-**  
3 **FACTURING**

4 **Subtitle A—Small Manufacturers**  
5 **Assistance**

6 **SEC. 101. EXPRESS LOANS.**

7 (a) IN GENERAL.—Section 7(a) of the Small Busi-  
8 ness Act (15 U.S.C. 636(a)) is amended by adding at the  
9 end the following:

10 “(31) EXPRESS LOANS.—



1           “(A) DEFINITIONS.—As used in this para-  
2 graph:

3           “(i) The term ‘express lender’ means  
4 any lender authorized by the Administra-  
5 tion to participate in the Express Loan  
6 Program.

7           “(ii) The term ‘express loan’ means  
8 any loan made pursuant to this paragraph  
9 in which a lender utilizes to the maximum  
10 extent practicable its own loan analyses,  
11 procedures, and documentation.

12           “(iii) The term ‘Express Loan Pro-  
13 gram’ means the program for express loans  
14 established by the Administration under  
15 paragraph (25)(B), as in existence on  
16 April 5, 2004, with a guaranty rate of not  
17 more than 50 percent.

18           “(B) RESTRICTION TO EXPRESS LEND-  
19 ER.—The authority to make an express loan  
20 shall be limited to those lenders deemed quali-  
21 fied to make such loans by the Administration.  
22 Designation as an express lender for purposes  
23 of making an express loan shall not prohibit  
24 such lender from taking any other action au-



1           thorized by the Administration for that lender  
2           pursuant to this subsection.

3           “(C) GRANDFATHERING OF EXISTING  
4           LENDERS.—Any express lender shall retain  
5           such designation unless the Administration de-  
6           termines that the express lender has violated  
7           the law or regulations promulgated by the Ad-  
8           ministration or modifies the requirements to be  
9           an express lender and the lender no longer sat-  
10          isfies those requirements.

11          “(D) MAXIMUM LOAN AMOUNT.—The max-  
12          imum loan amount under the Express Loan  
13          Program is \$350,000.

14          “(E) OPTION TO PARTICIPATE.—Except as  
15          otherwise provided in this paragraph, the Ad-  
16          ministration shall take no regulatory, policy, or  
17          administrative action, without regard to wheth-  
18          er such action requires notification pursuant to  
19          paragraph (24), that has the effect of requiring  
20          a lender to make an express loan pursuant to  
21          subparagraph (D).”.

22          (b) EFFECTIVE DATE.—The amendment made by  
23          subsection (a) shall take effect on the date of enactment  
24          of this Act.



1 **SEC. 102. LOAN GUARANTEE FEES.**

2 (a) **ADDITIONAL GUARANTEE FEE LEVEL.**—Section  
3 7(a)(18)(A) of the Small Business Act (15 U.S.C.  
4 636(a)(18)(A)) is amended to read as follows:

5 “(A) **IN GENERAL.**—With respect to each  
6 loan guaranteed under this subsection (other  
7 than a loan that is repayable in 1 year or less),  
8 the Administration shall collect a guarantee fee,  
9 which shall be payable by the participating  
10 lender, and may be charged to the borrower, as  
11 follows:

12 “(i) A guarantee fee not to exceed 2  
13 percent of the deferred participation share  
14 of a total loan amount that is not more  
15 than \$150,000.

16 “(ii) A guarantee fee not to exceed 3  
17 percent of the deferred participation share  
18 of a total loan amount that is more than  
19 \$150,000, but not more than \$700,000.

20 “(iii) A guarantee fee not to exceed  
21 3.5 percent of the deferred participation  
22 share of a total loan amount that is more  
23 than \$700,000.

24 “(iv) In addition to the fee under  
25 clause (iii), a guarantee fee equal to 0.25  
26 percent of any portion of the deferred par-

1                   ticipation share that is more than  
2                   \$1,000,000.”.

3           (b) CLERICAL AMENDMENT.—Section 7(a)(18) of the  
4 Small Business Act (15 U.S.C. 636(a)(18)) is amended  
5 by striking subparagraph (C).

6           (c) YEARLY FEE.—Section 7(a)(23) of the Small  
7 Business Act (15 U.S.C. 636(a)(23)) is amended—

8               (1) in the heading, by striking “ANNUAL” and  
9               inserting “YEARLY”;

10              (2) by striking subparagraph (A) and inserting  
11              the following:

12                   “(A) IN GENERAL.—With respect to each  
13                   loan approved under this subsection, the Ad-  
14                   ministration shall assess, collect, and retain a  
15                   fee, not to exceed 0.55 percent per year of the  
16                   outstanding balance of the deferred participa-  
17                   tion share of the loan, in an amount established  
18                   once annually by the Administration in the Ad-  
19                   ministration’s annual budget request to Con-  
20                   gress, as necessary to reduce to zero the cost to  
21                   the Administration of making guarantees under  
22                   this subsection. As used in this paragraph, the  
23                   term ‘cost’ has the meaning given that term in  
24                   section 502 of the Federal Credit Reform Act  
25                   of 1990 (2 U.S.C. 661a).”;





1 (3) in subparagraph (B), by striking “annual”  
2 and inserting “yearly”; and

3 (4) by adding at the end the following:

4 “(C) LOWERING OF BORROWER FEES.—If  
5 the Administration determines that fees paid by  
6 lenders and by small business borrowers for  
7 guarantees under this subsection may be re-  
8 duced, consistent with reducing to zero the cost  
9 to the Administration of making such  
10 guarantees—

11 “(i) the Administration shall first con-  
12 sider reducing fees paid by small business  
13 borrowers under clauses (i) through (iii) of  
14 paragraph (18)(A), to the maximum extent  
15 possible; and

16 “(ii) fees paid by small business bor-  
17 rowers shall not be increased above the lev-  
18 els in effect on the date of enactment of  
19 this subparagraph.”.

20 **SEC. 103. INCREASE IN GUARANTEE AMOUNT AND INSTITU-**  
21 **TION OF ASSOCIATED FEE.**

22 (a) INCREASE IN AMOUNT PERMITTED TO BE OUT-  
23 STANDING AND COMMITTED.—Section 7(a)(3)(A) of the  
24 Small Business Act (15 U.S.C. 636(a)(3)(A)) is amended  
25 by striking “\$1,000,000” and inserting “\$1,500,000”.



1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall take effect on the date of enactment  
3 of this Act.

4 **SEC. 104. DEBENTURE SIZE.**

5 Section 502(2) of the Small Business Investment Act  
6 of 1958 (15 U.S.C. 696(2)) is amended to read as follows:

7 “(2) MAXIMUM AMOUNT.—

8 “(A) IN GENERAL.—Loans made by the  
9 Administration under this section shall be lim-  
10 ited to—

11 “(i) \$1,500,000 for each small busi-  
12 ness concern if the loan proceeds will not  
13 be directed toward a goal or project de-  
14 scribed in subparagraph (B) or (C);

15 “(ii) \$2,000,000 for each small busi-  
16 ness concern if the loan proceeds will be di-  
17 rected toward 1 or more of the public pol-  
18 icy goals described under section  
19 501(d)(3); and

20 “(iii) \$4,000,000 for each project of a  
21 small manufacturer.

22 “(B) DEFINITION.—As used in this para-  
23 graph, the term ‘small manufacturer’ means a  
24 small business concern—



1                   “(i) the primary business of which is  
2                   classified in sector 31, 32, or 33 of the  
3                   North American Industrial Classification  
4                   System; and

5                   “(ii) all of the production facilities of  
6                   which are located in the United States.”.

7   **SEC. 105. JOB REQUIREMENTS.**

8           Section 501 of the Small Business Investment Act  
9   of 1958 (15 U.S.C. 695) is amended by adding at the end  
10 the following:

11           “(e)(1) A project meets the objective set forth in sub-  
12 section (d)(1) if the project creates or retains one job for  
13 every \$50,000 guaranteed by the Administration, except  
14 that the amount is \$100,000 in the case of a project of  
15 a small manufacturer.

16           “(2) Paragraph (1) does not apply to a project for  
17 which eligibility is based on the objectives set forth in  
18 paragraph (2) or (3) of subsection (d), if the development  
19 company’s portfolio of outstanding debentures creates or  
20 retains one job for every \$50,000 guaranteed by the Ad-  
21 ministration.

22           “(3) For projects in Alaska, Hawaii, State-designated  
23 enterprise zones, empowerment zones and enterprise com-  
24 munities, labor surplus areas, as determined by the Sec-  
25 retary of Labor, and for other areas designated by the



1 Administrator, the development company's portfolio may  
2 average not more than \$75,000 per job created or re-  
3 tained.

4       “(4) Loans for projects of small manufacturers shall  
5 be excluded from calculations under paragraph (2) or (3).

6       “(5) Under regulations prescribed by the Adminis-  
7 trator, the Administrator may waive, on a case-by-case  
8 basis or by regulation, any requirement of this subsection  
9 (other than paragraph (4)). With respect to any waiver  
10 the Administrator is prohibited from adopting a dollar  
11 amount that is lower than the amounts set forth in para-  
12 graphs (1), (2), and (3).

13       “(6) As used in this subsection, the term ‘small man-  
14 ufacturer’ means a small business concern—

15               “(A) the primary business of which is classified  
16 in sector 31, 32, or 33 of the North American In-  
17 dustrial Classification System; and

18               “(B) all of the production facilities of which are  
19 located in the United States.”.

20 **SEC. 106. REPORT REGARDING NATIONAL DATABASE OF**  
21 **SMALL MANUFACTURERS.**

22       (a) **STUDY AND REPORT.**—The Administrator, in  
23 consultation with the Association of Small Business Devel-  
24 opment Centers authorized by section 21(k) of the Small  
25 Business Act (15 U.S.C. 648(k)), shall—



1 (1) study the feasibility of creating a national  
2 database of small manufacturers that institutions of  
3 higher education could access for purposes of meet-  
4 ing procurement needs; and

5 (2) not later than 1 year after the date of en-  
6 actment of this Act, submit a report to the Congress  
7 regarding the findings and conclusions of such  
8 study.

9 (b) COST ESTIMATE.—The report referred to in sub-  
10 section (a)(2) shall include an estimate of the cost of cre-  
11 ating and maintaining the database described in sub-  
12 section (a)(1).

13 (c) DEFINITION.—As used in this section, the term  
14 “small manufacturer” means a small business concern—

15 (1) the primary business of which is classified  
16 in sector 31, 32, or 33 of the North American In-  
17 dustrial Classification System; and

18 (2) all of the production facilities of which are  
19 located in the United States.

20 **SEC. 107. INTERNATIONAL TRADE.**

21 (a) IN GENERAL.—Section 7(a)(16) of the Small  
22 Business Act (15 U.S.C. 636(a)(16)) is amended to read  
23 as follows:

24 “(16) INTERNATIONAL TRADE.—



1           “(A) IN GENERAL.—If the Administrator  
2 determines that a loan guaranteed under this  
3 subsection will allow an eligible small business  
4 concern that is engaged in or adversely affected  
5 by international trade to improve its competi-  
6 tive position, the Administrator may make such  
7 loan to assist such concern in—

8           “(i) the financing of the acquisition,  
9 construction, renovation, modernization,  
10 improvement, or expansion of productive  
11 facilities or equipment to be used in the  
12 United States in the production of goods  
13 and services involved in international  
14 trade; or

15           “(ii) the refinancing of existing in-  
16 debtedness that is not structured with rea-  
17 sonable terms and conditions.

18           “(B) SECURITY.—Each loan made under  
19 this paragraph shall be secured by a first lien  
20 position or first mortgage on the property or  
21 equipment financed by the loan or on other as-  
22 sets of the small business concern.

23           “(C) ENGAGED IN INTERNATIONAL  
24 TRADE.—For purposes of this paragraph, a  
25 small business concern is engaged in inter-



1 (1) by striking “\$1,250,000” and inserting  
2 “\$1,750,000”; and

3 (2) by striking “\$750,000” and inserting  
4 “\$1,250,000”.

5 (c) EFFECTIVE DATE.—The amendments made by  
6 this section shall take effect on the date of enactment of  
7 this Act.

8 **Subtitle B—Authorizations**

9 **CHAPTER 1—PROGRAM AUTHORIZATION**  
10 **LEVELS AND ADDITIONAL REAUTHOR-**  
11 **IZATIONS**

12 **SEC. 121. PROGRAM AUTHORIZATION LEVELS.**

13 Section 20 of the Small Business Act (15 U.S.C. 631  
14 note) is amended—

15 (1) in subsection (a)(1), by striking “certifi-  
16 cation” each place it appears in subparagraphs (D)  
17 and (E) and inserting “accreditation”; and

18 (2) by striking subsections (c) through (i) and  
19 inserting the following:

20 “(c) DISASTER MITIGATION PILOT PROGRAM.—The  
21 following program levels are authorized for loans under  
22 section 7(b)(1)(C):

23 “(1) \$15,000,000 for fiscal year 2005.

24 “(2) \$15,000,000 for fiscal year 2006.

25 “(d) FISCAL YEAR 2005.—



1           “(1) PROGRAM LEVELS.—The following pro-  
2           gram levels are authorized for fiscal year 2005:

3                   “(A) For the programs authorized by this  
4           Act, the Administration is authorized to  
5           make—

6                           “(i) \$75,000,000 in technical assist-  
7                           ance grants, as provided in section 7(m);  
8                           and

9                           “(ii) \$105,000,000 in direct loans, as  
10                          provided in 7(m).

11                   “(B) For the programs authorized by this  
12           Act, the Administration is authorized to make  
13           \$23,050,000,000 in deferred participation loans  
14           and other financings. Of such sum, the Admin-  
15           istration is authorized to make—

16                           “(i) \$16,500,000,000 in general busi-  
17                           ness loans, as provided in section 7(a);

18                           “(ii) \$6,000,000,000 in certified de-  
19                           velopment company financings, as provided  
20                           in section 7(a)(13) and as provided in sec-  
21                           tion 504 of the Small Business Investment  
22                           Act of 1958;

23                           “(iii) \$500,000,000 in loans, as pro-  
24                           vided in section 7(a)(21); and





1                   “(iv) \$50,000,000 in loans, as pro-  
2                   vided in section 7(m).

3                   “(C) For the programs authorized by title  
4                   III of the Small Business Investment Act of  
5                   1958, the Administration is authorized to  
6                   make—

7                   “(i) \$4,250,000,000 in purchases of  
8                   participating securities; and

9                   “(ii) \$3,250,000,000 in guarantees of  
10                  debentures.

11                  “(D) For the programs authorized by part  
12                  B of title IV of the Small Business Investment  
13                  Act of 1958, the Administration is authorized  
14                  to enter into guarantees not to exceed  
15                  \$6,000,000,000, of which not more than 50  
16                  percent may be in bonds approved pursuant to  
17                  section 411(a)(3) of that Act.

18                  “(E) The Administration is authorized to  
19                  make grants or enter into cooperative agree-  
20                  ments for a total amount of \$7,000,000 for the  
21                  Service Corps of Retired Executives program  
22                  authorized by section 8(b)(1).

23                  “(2) ADDITIONAL AUTHORIZATIONS.—

24                  “(A) There are authorized to be appro-  
25                  priated to the Administration for fiscal year



1           2005 such sums as may be necessary to carry  
2           out the provisions of this Act not elsewhere pro-  
3           vided for, including administrative expenses and  
4           necessary loan capital for disaster loans pursu-  
5           ant to section 7(b), and to carry out the Small  
6           Business Investment Act of 1958, including sal-  
7           aries and expenses of the Administration.

8           “(B) Notwithstanding any other provision  
9           of this paragraph, for fiscal year 2005—

10           “(i) no funds are authorized to be  
11           used as loan capital for the loan program  
12           authorized by section 7(a)(21) except by  
13           transfer from another Federal department  
14           or agency to the Administration, unless the  
15           program level authorized for general busi-  
16           ness loans under paragraph (1)(B)(i) is  
17           fully funded; and

18           “(ii) the Administration may not ap-  
19           prove loans on its own behalf or on behalf  
20           of any other Federal department or agen-  
21           cy, by contract or otherwise, under terms  
22           and conditions other than those specifically  
23           authorized under this Act or the Small  
24           Business Investment Act of 1958, except  
25           that it may approve loans under section



1                   7(a)(21) of this Act in gross amounts of  
2                   not more than \$2,000,000.

3           “(e) FISCAL YEAR 2006.—

4                   “(1) PROGRAM LEVELS.—The following pro-  
5                   gram levels are authorized for fiscal year 2006:

6                   “(A) For the programs authorized by this  
7                   Act, the Administration is authorized to  
8                   make—

9                           “(i) \$80,000,000 in technical assist-  
10                           ance grants, as provided in section 7(m);  
11                           and

12                           “(ii) \$110,000,000 in direct loans, as  
13                           provided in 7(m).

14                   “(B) For the programs authorized by this  
15                   Act, the Administration is authorized to make  
16                   \$25,050,000,000 in deferred participation loans  
17                   and other financings. Of such sum, the Admin-  
18                   istration is authorized to make—

19                           “(i) \$17,000,000,000 in general busi-  
20                           ness loans, as provided in section 7(a);

21                           “(ii) \$7,500,000,000 in certified de-  
22                           velopment company financings, as provided  
23                           in section 7(a)(13) and as provided in sec-  
24                           tion 504 of the Small Business Investment  
25                           Act of 1958;



1                   “(iii) \$500,000,000 in loans, as pro-  
2                   vided in section 7(a)(21); and

3                   “(iv) \$50,000,000 in loans, as pro-  
4                   vided in section 7(m).

5                   “(C) For the programs authorized by title  
6                   III of the Small Business Investment Act of  
7                   1958, the Administration is authorized to  
8                   make—

9                   “(i) \$4,500,000,000 in purchases of  
10                  participating securities; and

11                  “(ii) \$3,500,000,000 in guarantees of  
12                  debentures.

13                  “(D) For the programs authorized by part  
14                  B of title IV of the Small Business Investment  
15                  Act of 1958, the Administration is authorized  
16                  to enter into guarantees not to exceed  
17                  \$6,000,000,000, of which not more than 50  
18                  percent may be in bonds approved pursuant to  
19                  section 411(a)(3) of that Act.

20                  “(E) The Administration is authorized to  
21                  make grants or enter into cooperative agree-  
22                  ments for a total amount of \$7,000,000 for the  
23                  Service Corps of Retired Executives program  
24                  authorized by section 8(b)(1).

25                  “(2) ADDITIONAL AUTHORIZATIONS.—



1           “(A) There are authorized to be appro-  
2           priated to the Administration for fiscal year  
3           2006 such sums as may be necessary to carry  
4           out the provisions of this Act not elsewhere pro-  
5           vided for, including administrative expenses and  
6           necessary loan capital for disaster loans pursu-  
7           ant to section 7(b), and to carry out the Small  
8           Business Investment Act of 1958, including sal-  
9           aries and expenses of the Administration.

10           “(B) Notwithstanding any other provision  
11           of this paragraph, for fiscal year 2006—

12           “(i) no funds are authorized to be  
13           used as loan capital for the loan program  
14           authorized by section 7(a)(21) except by  
15           transfer from another Federal department  
16           or agency to the Administration, unless the  
17           program level authorized for general busi-  
18           ness loans under paragraph (1)(B)(i) is  
19           fully funded; and

20           “(ii) the Administration may not ap-  
21           prove loans on its own behalf or on behalf  
22           of any other Federal department or agen-  
23           cy, by contract or otherwise, under terms  
24           and conditions other than those specifically  
25           authorized under this Act or the Small



1 Business Investment Act of 1958, except  
2 that it may approve loans under section  
3 7(a)(21) of this Act in gross amounts of  
4 not more than \$2,000,000.”.

5 **SEC. 122. ADDITIONAL REAUTHORIZATIONS.**

6 (a) DRUG-FREE WORKPLACE PROGRAM ASSIST-  
7 ANCE.—Section 21(c)(3)(T) of the Small Business Act (15  
8 U.S.C. 648(c)(3)(T)) is amended by striking “October 1,  
9 2003” and inserting “October 1, 2006”.

10 (b) SMALL BUSINESS DEVELOPMENT CENTERS.—  
11 Section 21(a)(4)(C) of the Small Business Act (15 U.S.C.  
12 648(a)(4)(C)) is amended—

13 (1) by striking clause (vii) and inserting the fol-  
14 lowing:

15 “(vii) AUTHORIZATION OF APPROPRIA-  
16 TIONS.—There are authorized to be appro-  
17 priated to carry out this subparagraph—

18 “(I) \$130,000,000 for fiscal year  
19 2005; and

20 “(II) \$135,000,000 for fiscal year  
21 2006.”;

22 (2) by redesignating clause (viii) as clause (ix);  
23 and

24 (3) by inserting after clause (vii) the following:



1           “(viii) LIMITATION.—From the funds ap-  
2           propriated pursuant to clause (vii), the Admin-  
3           istration shall reserve not less than \$1,000,000  
4           in each fiscal year to develop portable assist-  
5           ance for startup and sustainability non-match-  
6           ing grant programs to be conducted by eligible  
7           small business development centers in commu-  
8           nities that are economically challenged as a re-  
9           sult of a business or government facility down  
10          sizing or closing, which has resulted in the loss  
11          of jobs or small business instability. A non-  
12          matching grant under this clause shall not ex-  
13          ceed \$100,000, and shall be used for small  
14          business development center personnel expenses  
15          and related small business programs and serv-  
16          ices.”.

17 **CHAPTER 2—PAUL D. COVERDELL DRUG-**  
18 **FREE WORKPLACE PROGRAM AU-**  
19 **THORIZATIONS AND SUNDRY AMEND-**  
20 **MENTS**

21 **SEC. 123. PAUL D. COVERDELL DRUG-FREE WORKPLACE**  
22 **PROGRAM AUTHORIZATION PROVISIONS.**

23           (a) IN GENERAL.—Section 27(g)(1) of the Small  
24 Business Act (15 U.S.C. 654(g)(1)) is amended by strik-  
25 ing “, \$5,000,000” in the first sentence and all that fol-



1 lows through “subsection” in the second sentence and in-  
2 serting the following: “(other than subsection (b)(2)),  
3 \$5,000,000 for each of fiscal years 2005 and 2006.  
4 Amounts made available under this paragraph”.

5 (b) LIMITATION ON AUTHORIZATION FOR SMALL  
6 BUSINESS DEVELOPMENT CENTERS.—Section 27(g)(2)  
7 of the Small Business Act (15 U.S.C. 654(g)) is amended  
8 by striking “this subsection, not more than the greater  
9 of 10 percent or \$1,000,000” and inserting “paragraph  
10 (1) for each of fiscal years 2005 and 2006, not more than  
11 the greater of 10 percent or \$500,000”.

12 (c) ADDITIONAL AUTHORIZATION FOR TECHNICAL  
13 ASSISTANCE GRANTS.—Section 27(g) of the Small Busi-  
14 ness Act (15 U.S.C. 654(g)) is amended by adding at the  
15 end the following:

16 “(3) ADDITIONAL AUTHORIZATION FOR TECH-  
17 NICAL ASSISTANCE GRANTS.—There are authorized  
18 to be appropriated to carry out subsection (b)(2),  
19 \$1,500,000 for each of fiscal years 2005 and 2006.  
20 Amounts made available under this paragraph shall  
21 remain available until expended.”.

22 (d) LIMITATION ON ADMINISTRATIVE COSTS.—Sec-  
23 tion 27(g) of the Small Business Act (15 U.S.C. 654(g)),  
24 as amended by subsection (c), is further amended by add-  
25 ing at the end the following:





1           “(4) LIMITATION ON ADMINISTRATIVE COSTS.—  
2       Not more than 5 percent of the total amount made  
3       available under this subsection for any fiscal year  
4       shall be used for administrative costs (determined  
5       without regard to the administrative costs of eligible  
6       intermediaries).”.

7   **SEC. 124. GRANT PROVISIONS.**

8       (a) ADDITIONAL GRANTS FOR TECHNICAL ASSIST-  
9   ANCE.—Section 27(b) of the Small Business Act (15  
10  U.S.C. 654) is amended—

11           (1) by striking “There is established” and in-  
12       serting the following:

13           “(1) IN GENERAL.—There is established”; and

14           (2) by adding at the end the following new  
15       paragraph:

16           “(2) ADDITIONAL GRANTS FOR TECHNICAL AS-  
17       SISTANCE.—In addition to grants under paragraph  
18       (1), the Administrator may make grants to, or enter  
19       into cooperative agreements or contracts with, any  
20       grantee for the purpose of providing, in cooperation  
21       with one or more small business development cen-  
22       ters, technical assistance to small business concerns  
23       seeking to establish a drug-free workplace pro-  
24       gram.”.



1 (b) 2-Year GRANTS.—Section 27(b) of the Small  
2 Business Act (15 U.S.C. 654(b)), as amended by sub-  
3 section (a), is further amended by adding at the end the  
4 following:

5 “(3) 2-year GRANTS.—Each grant made under  
6 this subsection shall be for a period of 2 years, sub-  
7 ject to an annual performance review by the Admin-  
8 istrator.”.

9 **SEC. 125. DRUG-FREE COMMUNITIES COALITIONS AS ELIGI-**  
10 **BLE INTERMEDIARIES.**

11 Section 27(a)(2)(D) of the Small Business Act (15  
12 U.S.C. 654(a)(2)) is amended to read as follows:

13 “(D)(i) the purpose of which is—

14 “(I) to develop comprehensive  
15 drug-free workplace programs or to  
16 supply drug-free workplace services;  
17 or

18 “(II) to provide other forms of  
19 assistance and services to small busi-  
20 ness concerns; or

21 “(ii) that is eligible to receive a grant  
22 under chapter 2 of the National Narcotics  
23 Leadership Act of 1988 (21 U.S.C. 1521  
24 et seq.).”.



1   **SEC. 126. PROMOTION OF EFFECTIVE PRACTICES OF ELIGI-**  
2                   **BLE INTERMEDIARIES.**

3           Section 27(c) of the Small Business Act (15 U.S.C.  
4   654(c)) is amended to read as follows:

5           “(c) PROMOTION OF EFFECTIVE PRACTICES OF ELI-  
6   GIBLE INTERMEDIARIES.—

7                   “(1) TECHNICAL ASSISTANCE AND INFORMA-  
8           TION.—The Administrator, after consultation with  
9           the Director of the Center for Substance Abuse and  
10          Prevention, shall provide technical assistance and in-  
11          formation to each eligible intermediary under sub-  
12          section (b) regarding the most effective practices in  
13          establishing and carrying out drug-free workplace  
14          programs.

15                  “(2) EVALUATION OF PROGRAM.—

16                          “(A) DATA COLLECTION AND ANALYSIS.—

17           Each eligible intermediary receiving a grant  
18           under this section shall establish a system to  
19           collect and analyze information regarding the  
20           effectiveness of drug-free workplace programs  
21           established with assistance provided under this  
22           section through the intermediary, including in-  
23           formation regarding any increase or decrease  
24           among employees in drug use, awareness of the  
25           adverse consequences of drug use, and absen-  
26           teeism, injury, and disciplinary problems related



1 to drug use. Such system shall conform to such  
2 requirements as the Administrator, after con-  
3 sultation with the Director of the Center for  
4 Substance Abuse and Prevention, may pre-  
5 scribe. Not more than 5 percent of the amount  
6 of each grant made under subsection (b) shall  
7 be used by the eligible intermediary to carry out  
8 this paragraph.

9 “(B) METHOD OF EVALUATION.—The Ad-  
10 ministrator, after consultation with the Director  
11 of the Center for Substance Abuse and Preven-  
12 tion, shall provide technical assistance and  
13 guidance to each eligible intermediary receiving  
14 a grant under subsection (b) regarding the col-  
15 lection and analysis of information to evaluate  
16 the effectiveness of drug-free workplace pro-  
17 grams established with assistance provided  
18 under this section, including the information re-  
19 ferred to in paragraph (1). Such assistance  
20 shall include the identification of additional in-  
21 formation suitable for measuring the benefits of  
22 drug-free workplace programs to the small busi-  
23 ness concern and to the concern’s employees  
24 and the identification of methods suitable for  
25 analyzing such information.”.



1 **SEC. 127. REPORT TO CONGRESS.**

2 Not later than March 31, 2006, the Administrator,  
3 in consultation with the Secretary of Labor, the Secretary  
4 of Health and Human Services, and the Director of Na-  
5 tional Drug Control Policy, shall submit to Congress a re-  
6 port that—

7 (1) analyzes the information collected under  
8 section 27(c) of the Small Business Act;

9 (2) identifies trends in such information; and

10 (3) evaluates the effectiveness of the drug-free  
11 workplace programs established with assistance  
12 under section 27 of the Small Business Act (15  
13 U.S.C. 654).

14 **Subtitle C—Administration**  
15 **Management**

16 **SEC. 131. LENDER EXAMINATION AND REVIEW FEES.**

17 Section 5(b) of the Small Business Act (15 U.S.C.  
18 634(b)) is amended—

19 (1) in paragraph (12), by striking “and” at the  
20 end;

21 (2) in paragraph (13), by striking the period at  
22 the end and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(14) require any lender authorized to make  
25 loans under section 7 of this Act to pay examination  
26 and review fees, which shall be deposited in the ac-



1 count for salaries and expenses of the Administra-  
2 tion, and shall be available for the costs of examina-  
3 tions, reviews, and other lender oversight activities.”.

4 **SEC. 132. GIFTS AND CO-SPONSORSHIP OF EVENTS.**

5 (a) IN GENERAL.—Section 4 of the Small Business  
6 Act (15 U.S.C. 633) is amended by adding at the end the  
7 following:

8 “(g) GIFTS.—

9 “(1) IN GENERAL.—The Administrator may,  
10 for purposes of this Act, the Small Business Invest-  
11 ment Act of 1954, and title IV of the Women’s  
12 Business Ownership Act of 1988, solicit, accept,  
13 hold, administer, utilize, and dispose of gifts, de-  
14 vises, and bequests of cash, property (including tan-  
15 gible, intangible, real, and personal), subsistence,  
16 and services. Notwithstanding any other provision of  
17 law, the Administrator may utilize gifts, devises, or  
18 bequests for marketing and outreach activities, in-  
19 cluding the cost of promotional materials and wear-  
20 ing apparel.

21 “(2) AUDITS.—Any gift, devise, or bequest of  
22 cash accepted by the Administrator shall be held in  
23 a separate account and shall be subject to semi-an-  
24 nual audits by the Inspector General of the Adminis-  
25 tration who shall report his findings to the Congress.



1           “(3) CONFLICTS OF INTEREST.—No gift, de-  
2       vise, or bequest shall be solicited or accepted under  
3       the authority of this subsection if such solicitation or  
4       acceptance would, in the determination of the Gen-  
5       eral Counsel, create a conflict of interest.

6           “(4) ACCEPTANCE OF SERVICES AND FACILI-  
7       TIES FOR DISASTER LOAN PROGRAM.—The Adminis-  
8       trator may accept the services and facilities of Fed-  
9       eral, State, and local agencies and groups, both pub-  
10      lic and private, and utilize such gratuitous services  
11      and facilities as may, from time to time, be nec-  
12      essary, to further the objectives of section 7(b).

13          “(h) CO-SPONSORSHIP OF EVENTS.—

14          “(1) AUTHORIZATION.—The Administrator,  
15      after consultation with the General Counsel, may  
16      provide assistance for the benefit of small business  
17      through Administration-sponsored activities, through  
18      cosponsored activities with any eligible entity, or  
19      through such other activities that the Administrator  
20      determines to be appropriate, including recognition  
21      events.

22          “(2) ELIGIBLE ENTITY.—For purposes of this  
23      subsection, the term ‘eligible entity’ means any for-  
24      profit or not-for-profit entity, any Federal, State, or



1 local government official, or any Federal, State, or  
2 local government entity.

3 “(3) PROHIBITION ON ENDORSEMENTS.—The  
4 Administrator shall ensure that the Administration  
5 and any eligible entities that cosponsor activities re-  
6 ceive appropriate recognition for such cosponsorship,  
7 and that such recognition does not constitute or  
8 imply an endorsement by the Administration of any  
9 product or service of such entity.

10 “(4) AUTHORITY TO CHARGE FEES.—Notwith-  
11 standing any other provision of law, the Adminis-  
12 trator may charge a participant in any activity spon-  
13 sored or cosponsored by the Administration a mini-  
14 mal fee, and retain and use such fee to cover the  
15 costs of such activity.

16 “(5) LIMITED DELEGATION.—The Adminis-  
17 trator may not delegate the authority described in  
18 this subsection except to the Deputy Administrator,  
19 an Associate Administrator, or an Assistant Admin-  
20 istrator.

21 “(6) REPORT TO CONGRESS.—The Inspector  
22 General of the Administration shall report semi-an-  
23 nually to Congress on the Administrator’s use of au-  
24 thority under this subsection.





1           “(7) RULEMAKING.—Not later than 180 days  
2           after the date of enactment of this subsection, the  
3           Administrator shall promulgate regulations to carry  
4           out the provisions of this subsection.”.

5           (b)       CONFORMING        AMENDMENTS.—Section  
6           8(b)(1)(A) of the Small Business Act (15 U.S.C.  
7           637(b)(1)(A)) is amended—

8           (1) by striking clause (ii);

9           (2) by striking “(1)(A) to provide—” and all  
10          that follows through “business concerns—” and in-  
11          serting the following:

12          “(1)(A) to provide technical, managerial, and  
13          informational aids to small business concerns—”;

14          (3) by redesignating subclauses (I) through  
15          (IV) as clauses (i) through (iv), respectively;

16          (4) by redesignating items (aa) and (bb) of  
17          clause (ii), as so redesignated by paragraph (3), as  
18          subclauses (I) and (II), respectively; and

19          (5) by striking “; and” at the end of clause (iv),  
20          as so redesignated by paragraph (3), and inserting  
21          a period.

22          (c) SUNSET PROVISION.—The amendments made by  
23          this section are repealed on October 1, 2006.



1           **Subtitle D—Entrepreneurial**  
2           **Development Programs**  
3           **CHAPTER 1—OFFICE OF**  
4           **ENTREPRENEURIAL DEVELOPMENT**

5   **SEC. 141. SERVICE CORPS OF RETIRED EXECUTIVES.**

6           (a) IN GENERAL.—Section 8(b)(1)(B) of the Small  
7 Business Act (15 U.S.C. 637(b)(1)(B)) is amended—

8               (1) by striking “this Act; and to”, and inserting  
9               “this Act. To”;

10              (2) by striking “may maintain at its head-  
11              quarters” and all that follows through “That any”  
12              and inserting “shall maintain at its headquarters  
13              and pay the salaries, benefits, and expenses of a vol-  
14              unteer and professional staff to manage and oversee  
15              the program. Any”; and

16              (3) by striking the period at the end and insert-  
17              ing “and the management of the contributions re-  
18              ceived.”.

19           (b) REGULATIONS.—The Administration shall, not  
20 later than 180 days after the date of enactment of this  
21 Act, promulgate regulations to carry out the amendments  
22 made by subsection (a).



1 SEC. 142. SMALL BUSINESS DEVELOPMENT CENTER PRO-  
2 GRAM.

3 (a) PRIVACY REQUIREMENTS.—Section 21(a) of the  
4 Small Business Act (15 U.S.C. 648(a)) is amended by  
5 adding at the end the following:

6 “(7) PRIVACY REQUIREMENTS.—

7 “(A) IN GENERAL.—A small business de-  
8 velopment center, consortium of small business  
9 development centers, or contractor or agent of  
10 a small business development center may not  
11 disclose the name, address, or telephone num-  
12 ber of any individual or small business concern  
13 receiving assistance under this section without  
14 the consent of such individual or small business  
15 concern, unless—

16 “(i) the Administrator is ordered to  
17 make such a disclosure by a court in any  
18 civil or criminal enforcement action initi-  
19 ated by a Federal or State agency; or

20 “(ii) the Administrator considers such  
21 a disclosure to be necessary for the pur-  
22 pose of conducting a financial audit of a  
23 small business development center, but a  
24 disclosure under this clause shall be limited  
25 to the information necessary for such  
26 audit.



1           “(B) ADMINISTRATOR USE OF INFORMA-  
2           TION.—This section shall not—

3                 “(i) restrict Administrator access to  
4                 program activity data; or

5                 “(ii) prevent the Administrator from  
6                 using client information to conduct client  
7                 surveys.

8           “(C) REGULATIONS.—

9                 “(i) IN GENERAL.—The Administrator  
10                shall issue regulations to establish  
11                standards—

12                “(I) for disclosures with respect  
13                to financial audits under subpara-  
14                graph (A)(ii); and

15                “(II) for client surveys under  
16                subparagraph (B)(ii), including stand-  
17                ards for oversight of such surveys and  
18                for dissemination and use of client in-  
19                formation.

20                “(ii) MAXIMUM PRIVACY PROTEC-  
21                TION.—Regulations under this subpara-  
22                graph, shall, to the extent practicable, pro-  
23                vide for the maximum amount of privacy  
24                protection.



1                   “(iii) INSPECTOR GENERAL.—Until  
2                   the effective date of regulations under this  
3                   subparagraph, any client survey and the  
4                   use of such information shall be approved  
5                   by the Inspector General who shall include  
6                   such approval in his semi-annual report.”.

7           (b) TERM CHANGE.—Section 21(k) of the Small  
8 Business Act (15 U.S.C. 648(k)) is amended—

9                   (1) by striking “CERTIFICATION” each place it  
10                  appears and inserting “ACCREDITATION”; and

11                  (2) by striking “certification” each place it ap-  
12                  pears and inserting “accreditation”.

## 13           **CHAPTER 2—OFFICE OF VETERANS**

### 14                   **BUSINESS DEVELOPMENT**

#### 15   **SEC. 143. ADVISORY COMMITTEE ON VETERANS BUSINESS**

##### 16                   **AFFAIRS.**

17           (a) RETENTION OF DUTIES.—Section 33(h) of the  
18 Small Business Act (15 U.S.C. 657c(h)) is amended by  
19 striking “October 1, 2004” and inserting “October 1,  
20 2006”.

21           (b) EXTENSION OF AUTHORITY.—Section 203(h) of  
22 the Veterans Entrepreneurship and Small Business Devel-  
23 opment Act of 1999 (15 U.S.C. 657b note) is amended  
24 by striking “September 30, 2004” and inserting “Sep-  
25 tember 30, 2006”.



1 **SEC. 144. OUTREACH GRANTS FOR VETERANS.**

2 Section 8(b)(17) of the Small Business Act (15  
3 U.S.C. 637(b)(17)) is amended by inserting before the pe-  
4 riod at the end the following: “, veterans, and members  
5 of a reserve component of the Armed Forces”.

6 **SEC. 145. AUTHORIZATION OF APPROPRIATIONS.**

7 Section 32 of the Small Business Act (15 U.S.C.  
8 657b) is amended by adding at the end the following:

9 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
10 are authorized to be appropriated to carry out this  
11 section—

12 “(1) \$1,500,000 for fiscal year 2005; and

13 “(2) \$2,000,000 for fiscal year 2006.”.

14 **SEC. 146. NATIONAL VETERANS BUSINESS DEVELOPMENT**  
15 **CORPORATION.**

16 Section 33(a) of the Small Business Act (15 U.S.C.  
17 657c(a)) is amended by adding at the end the following:  
18 “Notwithstanding any other provision of law, the Corpora-  
19 tion is a private entity and is not an agency, instrumen-  
20 tality, authority, entity, or establishment of the United  
21 States Government.”.

22 **CHAPTER 3—MANUFACTURING AND**  
23 **ENTREPRENEURIAL DEVELOPMENT**

24 **SEC. 147. SMALL BUSINESS MANUFACTURING TASK FORCE.**

25 (a) ESTABLISHMENT.—The Administrator of the  
26 Small Business Administration (referred to in this subtitle

1 as the “Administrator”) shall establish a Small Business  
2 Manufacturing Task Force (referred to in this section as  
3 the “Task Force”) to address the concerns of small manu-  
4 facturers.

5 (b) CHAIR.—The Administrator shall assign a mem-  
6 ber of the Task Force to serve as chair of the Task Force.

7 (c) DUTIES.—The Task Force shall—

8 (1) evaluate and identify whether programs and  
9 services are sufficient to serve the needs of small  
10 manufacturers;

11 (2) actively promote the programs and services  
12 of the Small Business Administration that serve  
13 small manufacturers; and

14 (3) identify and study the unique conditions  
15 facing small manufacturers and develop and propose  
16 policy initiatives to support and assist small manu-  
17 facturers.

18 (d) MEETINGS.—

19 (1) FREQUENCY.—The Task Force shall meet  
20 not less than 4 times per year, and more frequently  
21 if necessary to perform its duties.

22 (2) QUORUM.—A majority of the members of  
23 the Task Force shall constitute a quorum to approve  
24 recommendations or reports.

25 (e) PERSONNEL MATTERS.—



1 (1) COMPENSATION OF MEMBERS.—Each mem-  
2 ber of the Task Force shall serve without compensa-  
3 tion in addition to that received for services rendered  
4 as an officer or employee of the United States.

5 (2) DETAIL OF SBA EMPLOYEES.—Any em-  
6 ployee of the Small Business Administration may be  
7 detailed to the Task Force without reimbursement,  
8 and such detail shall be without interruption or loss  
9 of civil service status or privilege.

10 (f) REPORT.—Not later than 1 year after the date  
11 of enactment of this Act, and annually thereafter, the  
12 Task Force shall submit a report containing the findings  
13 and recommendations of the task force to—

14 (1) the President;

15 (2) the Committee on Small Business and En-  
16 trepreneurship of the Senate; and

17 (3) the Committee on Small Business of the  
18 House of Representatives.

## 19 **Subtitle E—HUBZone Program**

### 20 **SEC. 151. STREAMLINING AND REVISION OF HUBZONE ELI-** 21 **GIBILITY REQUIREMENTS.**

22 (a) IN GENERAL.—Section 3(p) of the Small Busi-  
23 ness Act (15 U.S.C. 632(p)) is amended—

24 (1) in paragraph (3)—





1 (A) by amending subparagraph (A) to read  
2 as follows:

3 “(A) a small business concern that is at  
4 least 51 percent owned and controlled by  
5 United States citizens;”

6 (B) in subparagraph (C), by striking “or”  
7 at the end;

8 (C) in subparagraph (D)(ii), by striking  
9 the period at the end and inserting “; or”; and

10 (D) by adding at the end the following:

11 “(E) a small business concern that is—

12 “(i) a small agricultural cooperative  
13 organized or incorporated in the United  
14 States;

15 “(ii) wholly owned by 1 or more small  
16 agricultural cooperatives organized or in-  
17 corporated in the United States; or

18 “(iii) owned in part by 1 or more  
19 small agricultural cooperatives organized  
20 or incorporated in the United States, if all  
21 owners are small business concerns or  
22 United States citizens.”; and

23 (2) in paragraph (5)(A)(i)(I)(aa), by striking  
24 “or (D)” and inserting “(C), (D), or (E)”.



1 (b) CONFORMING AMENDMENT.—Section 3(j) of the  
2 Small Business Act (15 U.S.C. 632(j)) is amended by  
3 striking “of section 7(b)(2)”.

4 **SEC. 152. EXPANSION OF QUALIFIED AREAS.**

5 (a) TREATMENT OF CERTAIN AREAS AS  
6 HUBZONES.—

7 (1) BASE CLOSURE AREAS.—Section 3(p)(1) of  
8 the Small Business Act (15 U.S.C. 632(p)(1)) is  
9 amended—

10 (A) in subparagraph (C), by striking “or”  
11 at the end;

12 (B) in subparagraph (D), by striking the  
13 period at the end and inserting “; or”; and

14 (C) by adding at the end the following:

15 “(E) base closure areas.”

16 (2) HUBZONE STATUS TIME LINE AND COM-  
17 MENCEMENT.—A base closure area that has under-  
18 gone final closure shall be treated as a HUBZone  
19 for purposes of the Small Business Act for a period  
20 of 5 years.

21 (3) DEFINITION.—Section 3(p)(4) of the Small  
22 Business Act (15 U.S.C. 632(p)(4)) is amended by  
23 adding at the end the following:

24 “(D) BASE CLOSURE AREA.—The term  
25 ‘base closure area’ means lands within the ex-



1           ternal boundaries of a military installation that  
2           were closed through a privatization process  
3           under the authority of—

4                   “(i) the Defense Base Closure and  
5                   Realignment Act of 1990 (part A of title  
6                   XXIX of Division B of Public Law 101–  
7                   510; 10 U.S.C. 2687 note);

8                   “(ii) title II of the Defense Authoriza-  
9                   tion Amendments and Base Closure and  
10                  Realignment Act (Public Law 100–526; 10  
11                  U.S.C. 2687 note);

12                  “(iii) section 2687 of title 10, United  
13                  States Code; or

14                  “(iv) any other provision of law au-  
15                  thorizing or directing the Secretary of De-  
16                  fense or the Secretary of a military depart-  
17                  ment to dispose of real property at the  
18                  military installation for purposes relating  
19                  to base closures of redevelopment, while re-  
20                  taining the authority to enter into a lease-  
21                  back of all or a portion of the property for  
22                  military use.”

23           (b) QUALIFIED NONMETROPOLITAN COUNTY.—Sec-  
24           tion 3(p)(4)(B)(ii)(II) of the Small Business Act (15  
25           U.S.C. 632(p)(4)(B)(ii)(II)) is amended to read as follows:



1                   “(II) the unemployment rate is  
2                   not less than 140 percent of the aver-  
3                   age unemployment rate for the United  
4                   States or for the State in which such  
5                   county is located, whichever is less,  
6                   based on the most recent data avail-  
7                   able from the Secretary of Labor.”

8           (c) TEMPORARY QUALIFIED AREAS EXTENSION AND  
9 QUALIFIED AREAS STUDY.—

10           (1) REDESIGNATED AREA.—Section 3(p)(4)(C)  
11           of the Small Business Act (15 U.S.C. 632(p)(4)(C))  
12           is amended by striking “only for the 3-year period  
13           following” and inserting the following:

14                   “ only until the later of—

15                   “(i) the date on which the Census Bu-  
16                   reau publicly releases the first results from  
17                   the 2010 decennial census; or

18                   “(ii) 3 years after”

19           (2) STUDY AND REPORT.—

20           (A) STUDY.—The Independent Office of  
21           Advocacy of the Small Business Administration  
22           shall conduct a study of the HUBZone program  
23           to measure the effectiveness of the definitions  
24           under section 3(p)(4) of the Small Business Act  
25           (15 U.S.C. 632(p)(4)) relating to HUBZone



1 qualified areas for the purposes of economic im-  
2 pact on small business development and jobs  
3 creation.

4 (B) REPORT.—Not later than May 1,  
5 2008, the Independent Office of Advocacy shall  
6 submit a report to the Committee on Small  
7 Business and Entrepreneurship of the Senate  
8 and the Committee on Small Business of the  
9 House of Representatives that contains—

10 (i) the results of the study conducted  
11 under paragraph (1); and

12 (ii) any proposed changes to the exist-  
13 ing definitions under section 3(p)(4) of the  
14 Small Business Act (15 U.S.C. 632(p)(4))  
15 relating to HUBZone qualified areas.

16 **SEC. 153. PRICE EVALUATION PREFERENCE.**

17 Section 31(b)(3) of the Small Business Act (15  
18 U.S.C. 657a(b)(3)) is amended—

19 (1) by redesignating subparagraph (C) as sub-  
20 paragraph (D); and

21 (2) by adding at the end the following:

22 “(C) PROCUREMENT OF COMMODITIES FOR  
23 INTERNATIONAL FOOD AID EXPORT OPER-  
24 ATIONS.—The price evaluation preference for  
25 purchases of agricultural commodities by the



1 Secretary of Agriculture for export operations  
2 through international food aid programs admin-  
3 istered by the Farm Service Agency shall be 5  
4 percent on the first portion of a contract to be  
5 awarded that is not greater than 20 percent of  
6 the total volume of each commodity being pro-  
7 cured in a single invitation.”

8 **SEC. 154. HUBZONE AUTHORIZATIONS.**

9 Section 31(d) of the Small Business Act (15 U.S.C.  
10 657a(d)) is amended by striking “2001 through 2003”  
11 and inserting “2004 through 2006”.

12 **SEC. 155. PARTICIPATION IN FEDERALLY FUNDED**  
13 **PROJECTS.**

14 Any small business concern that is certified, or other-  
15 wise meets the criteria for participation in any program  
16 under section 8(a) of the Small Business Act (15 U.S.C.  
17 637(a)), shall not be required by any State, or political  
18 subdivision thereof, to meet additional criteria or certifi-  
19 cation, unrelated to the capability to provide the requested  
20 products or services, in order to participate as a small dis-  
21 advantaged business in any program or project that is  
22 funded, in whole or in part, by the Federal Government.



1           **Subtitle F—Small Business**  
2           **Lending Companies**

3   **SEC. 161. SUPERVISORY AND ENFORCEMENT AUTHORITY**  
4           **FOR SMALL BUSINESS LENDING COMPANIES.**

5       Section 23 of the Small Business Act (15 U.S.C. 650)  
6   is amended to read as follows:

7   **“SEC. 23. SUPERVISORY AND ENFORCEMENT AUTHORITY**  
8           **FOR SMALL BUSINESS LENDING COMPANIES.**

9       “(a)   IN   GENERAL.—The   Administrator   is  
10   authorized—

11           “(1) to supervise the safety and soundness of  
12       small business lending companies and non-Federally  
13       regulated lenders;

14           “(2) with respect to small business lending  
15       companies to set capital standards to regulate, to ex-  
16       amine, and to enforce laws governing such compa-  
17       nies, in accordance with the purposes of this Act;  
18       and

19           “(3) with respect to non-Federally regulated  
20       lenders to regulate, to examine, and to enforce laws  
21       governing the lending activities of such lenders  
22       under section 7(a) in accordance with the purposes  
23       of this Act.

24       “(b) CAPITAL DIRECTIVE.—



1           “(1) IN GENERAL.—If the Administrator deter-  
2       mines that a small business lending company is  
3       being operated in an imprudent manner, the Admin-  
4       istrator may, in addition to any other action author-  
5       ized by law, issue a directive to such company to in-  
6       crease capital to such level as the Administrator de-  
7       termines will result in the safe and sound operation  
8       of such company.

9           “(2) DELEGATION.—The Administrator may  
10      not delegate the authority granted under paragraph  
11      (1) except to an Associate Deputy Administrator.

12          “(3) REGULATIONS.—The Administrator shall  
13      issue regulations outlining the conditions under  
14      which the Administrator may determine the level of  
15      capital pursuant to paragraph (1).

16          “(c) CIVIL ACTION.—If a small business lending com-  
17      pany violates this Act, the Administrator may institute a  
18      civil action in an appropriate district court to terminate  
19      the rights, privileges, and franchises of the company under  
20      this Act.

21          “(d) REVOCATION OR SUSPENSION OF LOAN AU-  
22      THORITY.—

23          “(1) The Administrator may revoke or suspend  
24      the authority of a small business lending company or  
25      a non-Federally regulated lender to make, service or





1       liquidate business loans authorized by section 7(a) of  
2       this Act—

3               “(A) for false statements knowingly made  
4       in any written submission required under this  
5       Act;

6               “(B) for omission of a material fact from  
7       any written submission required under this Act;

8               “(C) for willful or repeated violation of this  
9       Act;

10              “(D) for willful or repeated violation of  
11       any condition imposed by the Administrator  
12       with respect to any application, request, or  
13       agreement under this Act; or

14              “(E) for violation of any cease and desist  
15       order of the Administrator under this section.

16              “(2) The Administrator may revoke or suspend  
17       authority under paragraph (1) only after a hearing  
18       under subsection (f). The Administrator may dele-  
19       gate power to revoke or suspend authority under  
20       paragraph (1) only to the Deputy Administrator and  
21       only if the Administrator is unavailable to take such  
22       action.

23              “(A) The Administrator, after finding ex-  
24       traordinary circumstances and in order to pro-  
25       tect the financial or legal position of the United



1 States, may issue a suspension order without  
2 conducting a hearing pursuant to subsection  
3 (f). If the Administrator issues a suspension  
4 under the preceding sentence, the Adminis-  
5 trator shall within two business days follow the  
6 procedures set forth in subsection (f).

7 “(B) Any suspension under paragraph (1)  
8 shall remain in effect until the Administrator  
9 makes a decision pursuant to subparagraph (4)  
10 to permanently revoke the authority of the  
11 small business lending company or non-Feder-  
12 ally regulated lender, suspend the authority for  
13 a time certain, or terminate the suspension.

14 “(3) The small business lending company or  
15 non-Federally regulated lender must notify bor-  
16 rowers of a revocation and that a new entity has  
17 been appointed to service their loans. The Adminis-  
18 trator or an employee of the Administration des-  
19 ignated by the Administrator may provide such no-  
20 tice to the borrower.

21 “(4) Any revocation or suspension under para-  
22 graph (1) shall be made by the Administrator except  
23 that the Administrator shall delegate to an adminis-  
24 trative law judge as that term is used in section  
25 3105 of title 5, United States Code the authority to



1           “(3) The Administrator may further order such  
2           small business lending company or non-Federally  
3           regulated lender or other person to take such action  
4           or to refrain from such action as the Administrator  
5           deems necessary to insure compliance with this Act.

6           “(4) A cease and desist order under this sub-  
7           section may also provide for the suspension of au-  
8           thority to lend in subsection (d).

9           “(f) PROCEDURE FOR REVOCATION OR SUSPENSION  
10          OF LOAN AUTHORITY AND FOR CEASE AND DESIST  
11          ORDER.—

12           “(1) Before revoking or suspending authority  
13           under subsection (d) or issuing a cease and desist  
14           order under subsection (e), the Administrator shall  
15           serve an order to show cause upon the small busi-  
16           ness lending company, non-Federally regulated lend-  
17           er, or other person why an order revoking or sus-  
18           pending the authority or a cease and desist order  
19           should not be issued. The order to show cause shall  
20           contain a statement of the matters of fact and law  
21           asserted by the Administrator and the legal author-  
22           ity and jurisdiction under which a hearing is to be  
23           held, and shall set forth that a hearing will be held  
24           before an administrative law judge at a time and  
25           place stated in the order. Such hearing shall be con-



1        ducted pursuant to the provisions of sections 554,  
2        556, and 557 of title 5, United States Code. If after  
3        hearing, or a waiver thereof, the Administrator de-  
4        termines that an order revoking or suspending the  
5        authority or a cease and desist order should be  
6        issued, the Administrator shall promptly issue such  
7        order, which shall include a statement of the find-  
8        ings of the Administrator and the grounds and rea-  
9        sons therefor and specify the effective date of the  
10       order, and shall cause the order to be served on the  
11       small business lending company, non-Federally regu-  
12       lated lender, or other person involved.

13       “(2) Witnesses summoned before the Adminis-  
14       trator shall be paid by the party at whose instance  
15       they were called the same fees and mileage that are  
16       paid witnesses in the courts of the United States.

17       “(3) A cease and desist order, suspension or  
18       revocation issued by the Administrator, after the  
19       hearing under this subsection is final agency action  
20       for purposes of chapter 7 of title 5, United States  
21       Code. An adversely aggrieved party shall have 20  
22       days from the date of issuance of the cease and de-  
23       sist order, suspension or revocation, to seek judicial  
24       review in an appropriate district court.



1       “(g) REMOVAL OR SUSPENSION OF MANAGEMENT  
2 OFFICIAL.—

3           “(1) DEFINITION.—In this section, the term  
4       ‘management official’ means, with respect to a small  
5       business lending company or a non-Federally regu-  
6       lated lender, an officer, director, general partner,  
7       manager, employee, agent, or other participant in  
8       the management of the affairs of the company’s or  
9       lender’s activities under section 7(a) of this Act.

10          “(2) REMOVAL OF MANAGEMENT OFFICIAL.—

11               “(A) NOTICE.—The Administrator may  
12       serve upon any management official a written  
13       notice of its intention to remove that manage-  
14       ment official if, in the opinion of the Adminis-  
15       trator, the management official—

16                       “(i) willfully and knowingly commits a  
17       substantial violation of—

18                               “(I) this Act;

19                               “(II) any regulation issued under  
20       this Act;

21                               “(III) a final cease-and-desist  
22       order under this Act; or

23                               “(IV) any agreement by the man-  
24       agement official, the small business



1 lending company or non-Federally  
2 regulated lender under this Act; or

3 “(ii) willfully and knowingly commits  
4 a substantial breach of a fiduciary duty of  
5 that person as a management official and  
6 the violation or breach of fiduciary duty is  
7 one involving personal dishonesty on the  
8 part of such management official.

9 “(B) CONTENTS OF NOTICE.—A notice  
10 under subparagraph (A) shall contain a state-  
11 ment of the facts constituting grounds therefor  
12 and shall fix a time and place at which a hear-  
13 ing, conducted pursuant to sections 554, 556,  
14 and 557 of title 5, United States Code, will be  
15 held thereon.

16 “(C) HEARING.—

17 “(i) TIMING.—A hearing under sub-  
18 paragraph (B) shall be held not earlier  
19 than 30 days and later than 60 days after  
20 the date of service of notice of the hearing,  
21 unless an earlier or a later date is set by  
22 the Administrator at the request of—

23 “(I) the management official, and  
24 for good cause shown; or

25 “(II) the Attorney General.



1           “(ii) CONSENT.—Unless the manage-  
2           ment official appears at a hearing under  
3           this paragraph in person or by a duly au-  
4           thorized representative, the management  
5           official shall be deemed to have consented  
6           to the issuance of an order of removal  
7           under subparagraph (A).

8           “(D) ORDER OF REMOVAL.—

9           “(i) IN GENERAL.—In the event of  
10          consent under subparagraph (C)(ii), or if  
11          upon the record made at a hearing under  
12          this subsection, the Administrator finds  
13          that any of the grounds specified in the  
14          notice of removal has been established, the  
15          Administrator may issue such orders of re-  
16          moval from office as the Administrator  
17          deems appropriate.

18          “(ii) EFFECTIVENESS.—An order  
19          under clause (i) shall—

20                 “(I) take effect 30 days after the  
21                 date of service upon the subject small  
22                 business lending company or non-Fed-  
23                 erally regulated lender and the man-  
24                 agement official concerned (except in  
25                 the case of an order issued upon con-



1 sent as described in subparagraph  
2 (C)(ii), which shall become effective at  
3 the time specified in such order); and  
4 “(II) remain effective and en-  
5 forceable, except to such extent as it  
6 is stayed, modified, terminated, or set  
7 aside by action of the Administrator  
8 or a reviewing court in accordance  
9 with this section.

10 “(3) AUTHORITY TO SUSPEND OR PROHIBIT  
11 PARTICIPATION.—

12 “(A) IN GENERAL.—In order to protect a  
13 small business lending company, a non-Feder-  
14 ally regulated lender or the interests of the Ad-  
15 ministration or the United States, the Adminis-  
16 trator may suspend from office or prohibit from  
17 further participation in any manner in the man-  
18 agement or conduct of the affairs of a small  
19 business lending company or a non-Federally  
20 regulated lender a management official by writ-  
21 ten notice to such effect served upon the man-  
22 agement official. Such suspension or prohibition  
23 may prohibit the management official from  
24 making, servicing, reviewing, approving, or liq-





1           uidating any loan under section 7(a) of this  
2           Act.

3           “(B) EFFECTIVENESS.—A suspension or  
4           prohibition under subparagraph (A)—

5           “(i) shall take effect upon service of  
6           notice under paragraph (2); and

7           “(ii) unless stayed by a court in pro-  
8           ceedings authorized by subparagraph (C),  
9           shall remain in effect—

10           “(I) pending the completion of  
11           the administrative proceedings pursu-  
12           ant to a notice of intention to remove  
13           served under paragraph (2); and

14           “(II) until such time as the Ad-  
15           ministrator dismisses the charges  
16           specified in the notice, or, if an order  
17           of removal or prohibition is issued  
18           against the management official, until  
19           the effective date of any such order.

20           “(C) JUDICIAL REVIEW OF SUSPENSION  
21           PRIOR TO HEARING.—Not later than 10 days  
22           after a management official is suspended or  
23           prohibited from participation under subpara-  
24           graph (A), the management official may apply  
25           to an appropriate district court for a stay of the



1 suspension or prohibition pending the comple-  
2 tion of the administrative proceedings pursuant  
3 to a notice of intent to remove served upon the  
4 management official under paragraph (2).

5 “(4) AUTHORITY TO SUSPEND ON CRIMINAL  
6 CHARGES.—

7 “(A) IN GENERAL.—If a management offi-  
8 cial is charged in any information, indictment,  
9 or complaint authorized by a United States at-  
10 torney, with a felony involving dishonesty or  
11 breach of trust, the Administrator may, by writ-  
12 ten notice served upon the management official,  
13 suspend the management official from office or  
14 prohibit the management official from further  
15 participation in any manner in the management  
16 or conduct of the affairs of the small business  
17 lending company or non-Federally regulated  
18 lender.

19 “(B) EFFECTIVENESS.—A suspension or  
20 prohibition under subparagraph (A) shall re-  
21 main in effect until the information, indictment,  
22 or complaint is finally disposed of, or until ter-  
23 minated by the Administrator or upon an order  
24 of a district court.



1           “(C) AUTHORITY UPON CONVICTION.—If a  
2 judgment of conviction with respect to an of-  
3 fense described in subparagraph (A) is entered  
4 against a management official, then at such  
5 time as the judgment is not subject to further  
6 judicial review (and for purposes of this sub-  
7 paragraph shall not include any petition for a  
8 writ of habeas corpus), the Administrator may  
9 issue and serve upon the management official  
10 an order removing the management official, ef-  
11 fective upon service of a copy of the order upon  
12 the small business lending company or non-Fed-  
13 erally regulated lender.

14           “(D) AUTHORITY UPON DISMISSAL OR  
15 OTHER DISPOSITION.—A finding of not guilty  
16 or other disposition of charges described in sub-  
17 paragraph (A) shall not preclude the Adminis-  
18 trator from instituting proceedings under sub-  
19 section (e) or (f).

20           “(5) NOTIFICATION TO SMALL BUSINESS LEND-  
21 ING COMPANY OR A NON-FEDERALLY REGULATED  
22 LENDER.—Copies of each notice required to be  
23 served on a management official under this section  
24 shall also be served upon the small business lending  
25 company or non-Federally regulated lender involved.



1           “(6) FINAL AGENCY ACTION AND JUDICIAL RE-  
2           VIEW.—

3           “(A) ISSUANCE OF ORDERS.—After a  
4           hearing under this subsection, and not later  
5           than 30 days after the Administrator notifies  
6           the parties that the case has been submitted for  
7           final decision, the Administrator shall render a  
8           decision in the matter (which shall include find-  
9           ings of fact upon which its decision is predi-  
10          cated), and shall issue and cause to be served  
11          upon each party to the proceeding an order or  
12          orders consistent with this section. The decision  
13          of the Administrator shall constitute final agen-  
14          cy action for purposes of chapter 7 of title 5,  
15          United States Code.

16          “(B) JUDICIAL REVIEW.—An adversely ag-  
17          grieved party shall have 20 days from the date  
18          of issuance of the order to seek judicial review  
19          in an appropriate district court.

20          “(h) APPOINTMENT OF RECEIVER.—

21          “(1) In any proceeding under subsection (f)(4)  
22          or subsection (g)(6)(C), the court may take exclusive  
23          jurisdiction of a small business lending company or  
24          a non-Federally regulated lender and appoint a re-



1       ceiver to hold and administer the assets of the com-  
2       pany or lender.

3           “(2) Upon request of the Administrator, the  
4       court may appoint the Administrator as a receiver  
5       under paragraph (1).

6       “(i) POSSESSION OF ASSETS.—

7           “(1) If a small business lending company or a  
8       non-Federally regulated lender is not in compliance  
9       with capital requirements or is insolvent, the Admin-  
10      istrator may take possession of the portfolio of loans  
11      guaranteed by the Administrator and sell such loans  
12      to a third party by means of a receiver appointed  
13      under subsection (h).

14          “(2) If a small business lending company or a  
15      non-Federally regulated lender is not in compliance  
16      with capital requirements or is insolvent or otherwise  
17      operating in an unsafe and unsound condition, the  
18      Administrator may take possession of servicing ac-  
19      tivities of loans that are guaranteed by the Adminis-  
20      trator and sell such servicing rights to a third party  
21      by means of a receiver appointed under subsection  
22      (h).

23       “(j) PENALTIES AND FORFEITURES.—

24           “(1) Except as provided in paragraph (2), a  
25      small business lending company or a non-Federally



1 regulated lender which violates any regulation or  
2 written directive issued by the Administrator regard-  
3 ing the filing of any regular or special report shall  
4 pay to the United States a civil penalty of not more  
5 than \$5,000 for each day of the continuance of the  
6 failure to file such report, unless it is shown that  
7 such failure is due to reasonable cause and not due  
8 to willful neglect. The civil penalties under this sub-  
9 section may be enforced in a civil action brought by  
10 the Administrator. The penalties under this sub-  
11 section shall not apply to any affiliate of a small  
12 business lending company that procures at least 10  
13 percent of its annual purchasing requirements from  
14 small manufacturers.

15 “(2) The Administrator may by rules and regu-  
16 lations that shall be codified in the Code of Federal  
17 Regulations, after an opportunity for notice and  
18 comment, or upon application of an interested party,  
19 at any time previous to such failure, by order, after  
20 notice and opportunity for hearing which shall be  
21 conducted pursuant to sections 554, 556, and 557 of  
22 title 5, United States Code, exempt in whole or in  
23 part, any small business lending company or non-  
24 Federally regulated lender from paragraph (1), upon  
25 such terms and conditions and for such period of



1 time as it deems necessary and appropriate, if the  
2 Administrator finds that such action is not incon-  
3 sistent with the public interest or the protection of  
4 the Administration. The Administrator may for the  
5 purposes of this section make any alternative re-  
6 quirements appropriate to the situation.”.

7 **SEC. 162. DEFINITIONS RELATING TO SMALL BUSINESS**  
8 **LENDING COMPANIES.**

9 Section 3 of the Small Business Act (15 U.S.C. 632)  
10 is amended by adding at the end the following new sub-  
11 section:

12 “(r) DEFINITIONS RELATING TO SMALL BUSINESS  
13 LENDING COMPANIES.—As used in section 23 of this Act:

14 “(1) SMALL BUSINESS LENDING COMPANY.—  
15 The term ‘small business lending company’ means a  
16 business concern that is authorized by the Adminis-  
17 trator to make loans pursuant to section 7(a) and  
18 whose lending activities are not subject to regulation  
19 by any Federal or State regulatory agency

20 “(2) NON-FEDERALLY REGULATED SBA LEND-  
21 ER.—The term ‘non-Federally regulated SBA lend-  
22 er’ means a business concern if—

23 “(A) such concern is authorized by the Ad-  
24 ministrator to make loans under section 7;



1           “(B) such concern is subject to regulation  
2           by a State; and

3           “(C) the lending activities of such concern  
4           are not regulated by any Federal banking au-  
5           thority.”.

6           **TITLE II—MISCELLANEOUS**  
7           **AMENDMENTS**

8   **SEC. 201. AMENDMENT TO DEFINITION OF EQUITY CAPITAL**  
9           **WITH RESPECT TO ISSUERS OF PARTICI-**  
10          **PATING SECURITIES.**

11          Section 303(g)(4) of the Small Business Investment  
12   Act of 1958 (15 U.S.C. 683 (g)(4)) is amended—

13           (1) in the first sentence, by striking “sub-  
14          section” and inserting “Act”; and

15           (2) in the second sentence, by striking “contin-  
16          gent upon and limited to the extent of earnings” and  
17          inserting “from appropriate sources, as determined  
18          by the Administration”.

19   **SEC. 202. INVESTMENT OF EXCESS FUNDS.**

20          Section 308(b) of the Small Business Investment Act  
21   (15 U.S.C. 687(b)) is amended by striking the last sen-  
22   tence and inserting the following: “Any such company that  
23   is licensed before October 1, 2004 and has outstanding  
24   financings is authorized to invest funds not needed for its  
25   operations—





1           “(1) in direct obligations of, or obligations  
2           guaranteed as to principal and interest by, the  
3           United States;

4           “(2) in certificates of deposit or other accounts  
5           of federally insured banks or other federally insured  
6           depository institutions, if the certificates or other ac-  
7           counts mature or are otherwise fully available not  
8           more than 1 year after the date of the investment;  
9           or

10          “(3) in mutual funds, securities, or other in-  
11          struments that consist of, or represent pooled assets  
12          of, investments described in paragraphs (1) or (2).”.

13 **SEC. 203. SURETY BOND AMENDMENTS.**

14          (a) CLARIFICATION OF MAXIMUM SURETY BOND  
15 GUARANTEE.—Section 411(a)(1) of the Small Business  
16 Investment Act of 1958 (15 U.S.C. 694b(a)(1)) is amend-  
17 ed by striking “contract up to” and inserting “total work  
18 order or contract amount at the time of bond execution  
19 that does not exceed”.

20          (b) AUDIT FREQUENCY.—Section 411(g)(3) of the  
21 Small Business Investment Act of 1958 (15 U.S.C.  
22 694b(g)(3)) is amended by striking “each year” and in-  
23 serting “every three years”.



1       (c) REPEAL.—Section 207 of the Small Business Re-  
2 authorization and Amendment Act of 1988 (15 U.S.C.  
3 694b note) is repealed.

4 **SEC. 204. EFFECTIVE DATE FOR CERTAIN FEES.**

5       Section 503(f) of the Small Business Investment Act  
6 of 1958 (15 U.S.C. 697(f)) is amended by striking “, but”  
7 and all that follows through the end and inserting a pe-  
8 riod.





And the Senate agree to the same.

Managers on the Part of the  
House

Jim Kolbe

Joe Knollenberg

Jerry Lewis

Roger F. Wicker

Henry Bonilla

David Vitter

Mark Steven Kirk

Ander Crenshaw

C.W. Bill Young

Ralph Regula

David L. Hobson

~~Nita M. Lowey~~

~~Jesse L. Jackson, Jr.~~

~~Carolyn G. Kilpatrick~~

Steven R. Rothman

~~Marcy Kaptur~~

~~David R. Obey~~

~~Peter J. Visclosky~~

Managers on the part of the

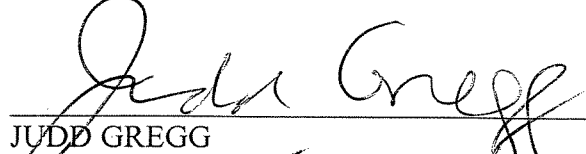
SENATE



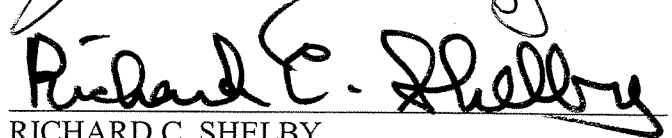
MITCH MCCONNELL



THAD COCHRAN



JUDD GREGG



RICHARD C. SHELBY



ROBERT F. BENNETT



BEN NIGHTHORSE CAMPBELL



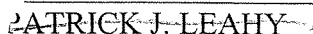
CHRISTOPHER S. BOND



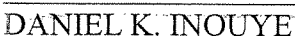
MIKE DEWINE



TED STEVENS



PATRICK J. LEAHY



DANIEL K. INOUE

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~~TOM HARKIN~~

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~~BARBARA A. MIKULSKI~~

---

~~RICHARD J. DURBIN~~

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~~TIM JOHNSON~~

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~~MARY L. LANDRIEU~~

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~~ROBERT C. BYRD~~